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THE RIGHT OF PEOPLES TO SELF-DETERMINATION AND ITS APPLICATION TO PEOPLES UNDER COLONIAL OR ALIEN DOMINATION OR FOREIGN OCCUPATION

Report on the question of the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination, submitted by Mr. Enrique Bernales Ballesteros (Peru), Special Rapporteur, pursuant to Commission resolution 1991/7

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I. INTRODUCTION

1. At its forty-third session, on 9 March 1987, the Commission on Human Rights adopted resolution 1987/16, in which it decided to appoint a Special Rapporteur to examine the question of the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination. The direct motivation for this resolution were paragraph 5 of Economic and Social Council resolution 1986/43 of 23 May 1986, and General Assembly resolution 41/102 of 4 December 1986, whereby both bodies urged the Commission on Human Rights to appoint a special rapporteur on that subject. By decision 1987/144 of 29 May 1987, the Economic and Social Council approved the Commission's decision to appoint a Special Rapporteur.

2. Subsequently, press release HR/2062 of 3 September 1987 announced the decision of the Chairman of the Commission during the forty-third session, after consultations with the Bureau of the Commission, to appoint Mr. Enrique Bernales Ballesteros of Peru as Special Rapporteur of the Commission on the question of the use of mercenaries.

3. Since then, the Special Rapporteur has submitted eight reports to the General Assembly and the Commission on Human Rights, in which he developed a set of definitions of mercenary activities. He defined the concepts of "mercenarism" (as a generic term including all mercenary operations and the existence of a causal agent) and of "mercenary" (as an individual accountable at the level of planning and execution), and reported on the status of international law on the subject, notably article 47 of Additional Protocol I to the Geneva Conventions of 1949, the Convention for the Elimination of Mercenarism in Africa adopted by the Organization of African Unity (OAU) in Libreville in 1977, and the International Convention against the Recruitment, Use, Financing and Training of Mercenaries adopted by the General Assembly in resolution 44/34 of 4 December 1989. In his reports, the Special Rapporteur also developed the idea that mercenary activities are a means of violating human rights and impeding the exercise of the right of peoples to self-determination; he reported on the rules and regulations deriving from the legislation in effect in various States against mercenary activities; and he gave an account of his activities and travels in execution of his mandate.

4. During its forty-seventh session, the Commission reviewed the seventh report of the Special Rapporteur (E/CN.4/1991/14) and adopted without a vote resolution 1991/7 of 22 February 1991, in which it takes note with appreciation of the report of the Special Rapporteur (para. 1 of the resolution); requests him to submit a preliminary report to the General Assembly at its forty-sixth session under the agenda item "Importance of the universal realization of the right of peoples to self-determination and of the speedy granting of independence to colonial countries and peoples for the effective guarantee and observance of human rights" (para. 4); also requests him to submit a report to the Commission at its forty-eighth session on all further developments concerning the use of mercenaries, wherever this may occur (para. 5); reaffirms that the recruitment, use, financing and training of mercenaries should be considered as offences of grave concern to

all States (para. 2); and calls upon all States which have not yet done so to consider taking early action to accede to or ratify the International Convention against the Recruitment, Use, Financing and Training of Mercenaries (para. 3).

5. On 31 May 1991, the Economic and Social Council adopted decision 1991/233, by which it approved the request, made by the Commission on Human Rights in its resolution 1991/7, that the Special Rapporteur should submit a preliminary report to the General Assembly at its forty-sixth session.

6. On 13 November 1991, during the forty-sixth session of the General Assembly, the Third Committee approved a resolution on the use of mercenaries as a means to violate human rights and to impede the exercise of the right of peoples to self-determination. In that resolution the General Assembly affirms that the use of mercenaries and their recruitment, financing and training are offences of grave concern to all States and violate the purposes and principles enshrined in the Charter of the United Nations (para. 3); denounces any State that persists in the recruitment, or permits or tolerates the recruitment, of mercenaries and provides facilities to them for launching armed aggression against other States (para. 5); and also urges all States to take the necessary steps and to exercise the utmost vigilance against the menace posed by the activities of mercenaries and to ensure, by both administrative and legislative measures, that the territory of those States and other territories under their control, as well as their nationals, are not used for the recruitment, assembly, financing, training and transit of mercenaries, or for the planning of activities designed to destabilize or overthrow the Government of any State and to fight the national liberation movements struggling against racism, apartheid, colonial domination and foreign intervention or occupation (para. 6).

7. The Assembly calls upon all States to extend humanitarian assistance to victims of situations resulting from the use of mercenaries, as well as from colonial or alien domination or foreign occupation (para. 7); it reaffirms that to use channels of humanitarian and other assistance to finance, train and arm mercenaries is inadmissible (para. 8); and it urges all States which have not yet done so to consider taking early action to sign, accede to or ratify the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, in order to expedite the coming into force of that Convention (para. 9). Elsewhere, it condemns the continued recruitment, financing, training, assembly, transit and use of mercenaries, as well as all other forms of support to mercenaries, for the purpose of destabilizing and overthrowing the Governments of African States and of other developing States and fighting against the national liberation movements of peoples struggling for the exercise of their right to self-determination (para. 2). In addition, it notes with serious concern the use by the racist South African regime of groups of armed mercenaries against national liberation movements and for the destabilization of the Governments of southern African States (para. 4); takes note with appreciation the report of the Special Rapporteur (para. 1); and requests the submission of a report on the use of mercenaries to the General Assembly at its forty-seventh session (para. 10).

8. Besides his mandate as contained in Commission resolution 1991/7, the Special Rapporteur has been assigned further tasks by Commission resolutions 1990/75 of 7 March 1990 and 1991/29 of 5 March 1991. Paragraph 2 of resolution 1991/29 requests all special rapporteurs and working groups "to continue paying particular attention to the adverse effects on the enjoyment of human rights of ... acts of violence committed by armed groups, regardless of their origin, that spread terror among the population, and by drug traffickers" in their forthcoming reports to the Commission. Pursuant to that resolution, chapter III of this report discusses reports on incidents of this nature which have come through the Centre for Human Rights.

9. Pursuant to the aforementioned resolutions, the Special Rapporteur has the honour to submit to the Commission his ninth report on the question of the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination, and on the adverse effects on the enjoyment of human rights of acts of violence committed by armed groups that spread terror among the population and by drug traffickers.

II. ACTIVITIES OF THE SPECIAL RAPPORTEUR

A. Implementation of the programme of activities

10. In order to submit his seventh report (E/CN.4/1991/14) to the Commission on Human Rights, the Special Rapporteur travelling to Geneva on 25 January 1991. During his stay in Geneva, the Special Rapporteur presented his report, held consultations with representatives of a number of States and met with members of non-governmental organizations, in each case to discuss matters relating to his mandate.

11. In late June 1991 the Special Rapporteur visited New York to attend to activities relating to his mandate at United Nations Headquarters. He had a private meeting with the Secretary-General and met the Permanent Representative of Angola to the United Nations in order to express appreciation for the invitation to visit the country, extended to him by the Minister for Foreign Affairs, Mr. Pedro De Castro Van-Dunem, and to coordinate various aspects of the preparations for that visit.

12. The Special Rapporteur returned to Geneva from 30 June to 5 July 1991 in order to hold various consultations and meetings and to begin drafting his preliminary report to the General Assembly. On that occasion, as scheduled in his programme, he met the Permanent Representative of South Africa to the United Nations at Geneva, Ambassador Albert Leslie Manley, for an exchange of information and viewpoints on progress in the abandonment and dismantling of apartheid and the democratization of South Africa, and on reports received by the Special Rapporteur, as documented in his earlier reports, about the use of mercenaries under the apartheid regime. The possibility of a future visit by the Special Rapporteur to South Africa was also raised.

13. On 4 July 1991, the Special Rapporteur had a meeting at the Centre for Human Rights with Ambassador Mutuale Kikanke, the Permanent Representative of Zaire to the United Nations at Geneva. The Special Rapporteur informed the Permanent Representative that he had received reports from non-governmental sources about the possible presence in the territory of Zaire of

Colonel Bob Denard, who on 26 November 1989 had led a coup d'état against the Government of the Comoros that cost the life of the President, Ahmed Abdallah Abderemane. According to those reports, Denard had been appointed to train a Presidential Guard. The Special Rapporteur expressed his grave concern at those reports and asked the Permanent Representative to seek from his Government an investigation into the possible presence, residence and legal status of Denard in Zaire.

14. The Permanent Representative thanked the Special Rapporteur for the interest he had shown in sharing his anxiety and concern. He said that he would request his Government to conduct the investigation in question and that as soon as he received the results he would transmit them to the Special Rapporteur. Furthermore, he referred to the current process of democratization in his country and to the fact that more than 100 groups had applied for registration as political parties.

15. During a trip to Geneva from 13 to 16 August 1991 to present a report to the forty-third session of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, the Special Rapporteur completed his preliminary report to the General Assembly and coordinated a number of matters relating to his forthcoming visit to Angola in November 1991. Regrettably that visit could not take place because of last-minute logistical difficulties in Angola, and has had to be postponed to a date to be specified.

16. On 8 October 1991 the Special Rapporteur introduced his preliminary report (A/46/459) before the Third Committee of the General Assembly.

17. The Special Rapporteur returned to Geneva from 20 to 23 November 1991 to draft this report and undertake a variety of activities relating to his mandate. During that period, on 22 November, he had a meeting with the Permanent Representative of the United Kingdom of Great Britain and Northern Ireland to the United Nations at Geneva.

B. Correspondence

18. Pursuant to General Assembly resolution 45/132 of 14 December 1990 and Commission on Human Rights resolutions 1990/7 of 19 February 1990 and 1991/7 of 22 February 1991, the Special Rapporteur sent communications to all Member States requesting information on matters relating to mercenary activities, their domestic legislation and any treaties on the subject to which they were parties, and urging them to consider the possibility of ratifying or acceding to the International Convention against the Recruitment, Use, Financing and Training of Mercenaries. In addition to general and other information from non-governmental sources he received official communications from several Member States as detailed below.

19. The Ministry of Foreign Affairs of Burkina Faso sent a letter to the Special Rapporteur on 30 November 1990. The letter reads as follows:

"Burkina Faso has not yet ratified the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, but is aware of its importance for the realization of the right of peoples to self-determination. Consequently, all necessary arrangements are being made so that the ratification can take place as soon as possible."

20. The General Secretary of the Ministry of Foreign Affairs and Cooperation of the Congo sent a letter to the Special Rapporteur on 6 December 1990 which reads as follows:

"The importance of combating the recruitment, use, financing and training of mercenaries has been understood by the African States since their independence;

"On 3 July 1977, in Libreville, Gabon, the Organization of African Unity (OAU) adopted the Convention for the Elimination of Mercenarism in Africa.

"The People's Republic of the Congo acceded to this Convention on 1 April 1988 and the letters of accession were deposited with the OAU General Secretariat on 9 September 1988.

"In so doing the Government of the Congo can only give added force to the means available by law for achieving a total prohibition of activities impeding the free exercise by peoples of their right to self-determination.

"Indeed, a people or nation must be free to choose its own government and political system. Any activity impeding the exercise of this inalienable right is contrary to law and to international practice.

"The People's Republic of the Congo maintains friendly relations with all Member States of the United Nations while respecting basic principles such as non-interference in the internal affairs of States and territorial integrity.

"The Congo remains convinced that the use of force and the use of mercenaries are serious threats to international peace and security.

"The International Convention against the Recruitment, Use, Financing and Training of Mercenaries adopted in 1989 serves in our view to complement the action already taken by OAU.

"The People's Republic of the Congo will become a party to the International Convention upon completion of the required constitutional formalities.

"Until they are completed, the Government of the People's Republic of the Congo undertakes to work together with the member States of OAU and the Member States of the United Nations for the elimination of mercenarism throughout the world."

21. On 13 December 1990, the Government of Honduras sent a letter to the Special Rapporteur stating that it "will continue with the greatest pleasure to provide you with all relevant information to assist you in the best performance of your sensitive task as Special Rapporteur of the Commission on Human Rights on the question of the use of mercenaries".

22. On 28 December 1990 the Special Rapporteur wrote a letter to the Minister for Foreign Affairs of Trinidad and Tobago, Mr. Sahades Basdeo, to ask him for "official information from your Government on the serious events which occurred in your country in July 1990 and the alleged participation therein of foreign mercenaries". The Special Rapporteur also asked for information "on the negotiations with the Jamaat al-Muslimeen armed group and on the recent developments in the political situation in Trinidad and Tobago". As of the time of the drafting of this report, there has been no reply to that letter.

23. On 16 January 1991, the Permanent Mission of Nicaragua to the United Nations sent the Special Rapporteur a communication reading:

"Under the Tela (Honduras) agreements signed by the Central American Presidents on 7 August 1989, a Joint Plan for the voluntary demobilization, repatriation or relocation in Nicaragua or third countries of the members of the Nicaraguan resistance was adopted, which was formally set out in the Toncontín Agreement (Honduras) of 23 March 1990. It was agreed therein to ask the United Nations Observer Group in Central America (ONUCA) and the International Support and Verification Commission (CIAV) to take the necessary steps to guarantee support for the process of demobilizing and disarming the members of the resistance, both inside Nicaragua and in other countries, by a completion date of 25 April 1990.

"Accordingly, the Government of Nicaragua is pleased to inform the Special Rapporteur on the question of the use of mercenaries that on 28 June 1990 final arrangements were made for demobilization throughout Nicaraguan territory. At the present time, the demobilization is complete and the total number of those demobilized, as certified by ONUCA, was 19,613, all of them Nicaraguans.

"The Government of Nicaragua therefore considers that the causes that gave rise to the military conflict [and] provoked its charges that mercenaries were being used against its territory and its inhabitants have ceased to exist, and it therefore deems it appropriate to request the Special Rapporteur to withdraw the charges submitted to him on the matter."

24. On 20 March 1991, the Permanent Delegation of Uruguay to the United Nations at Geneva sent a communication that stated as follows:

> "This Permanent Delegation wishes to report that Uruguay signed the International Convention against the Recruitment, Use, Financing and Training of Mercenaries on 20 November 1990. Uruguay's Executive Branch has now sent the regulation message to the Legislative Branch requesting its approval to expedite ratification."

25. The Special Rapporteur addressed a communication dated 15 May 1991 to the Permanent Representative of Angola to the United Nations, Ambassador Manuel Pedro Pacavira, asking him to transmit the text of the four agreements negotiated in Estoril, Portugal, between his Government and the União Nacional para a Independência Total de Angola (UNITA), which constitute a preliminary peace agreement.

26. On 23 April 1991, the Minister for Foreign Affairs of Angola, Mr. Pedro De Castro Van-Dunem, sent a letter to the Special Rapporteur inviting him to visit Angola during the second half of 1991, within the scope of the cooperation existing between Angola and the organization of the United Nations system. This letter, received at the Centre for Human Rights on 17 June 1991, reads as follows:

> "Allow me to express the deep appreciation of my Government to the functions of the Special Rapporteur on the use of mercenaries of the United Nations Human Rights Commission, which you are discharging with great capability and abnegation.
>
> "I am confident that you will render concrete the objectives set forward by the Organization during your mandate.
>
> "I avail myself of this opportunity to invite you on behalf of my Government and on my own to visit the People's Republic of Angola, during the second half of 1991, in the scope of the cooperation which exists between my country and the bodies within the system of the United Nations.
>
> "The date of this visit may be fixed through the diplomatic channels."

27. The Special Rapporteur replied to this letter in a communication dated 5 July 1991 addressed to the Minister for Foreign Affairs of Angola. The Special Rapporteur accepted the invitation, saying that the visit would allow him to update the work he had done on mercenary activities that have had an impact on peace in Angola and the right of its people to self-determination.

28. The Special Rapporteur sent a letter on 20 June 1991 to the Permanent Representative of Zaire to the United Nations at Geneva, Ambassador Mutuale Kikanke. In it the Special Rapporteur recalled that he referred in his previous report to the Commission on Human Rights (E/CN.4/1991/14, paras. 67-76) to the coup d'état that had taken place in the Comoros on 26 November 1989 during which the President, Ahmed Abdallah Abderemane, had been assassinated. The mercenaries who

engineered the coup had been led by Colonel Bob Denard, a French national. The Special Rapporteur alluded to the existence of reports that Denard was in Kinshasa, in charge of training the Presidential Guard. The Special Rapporteur expressed his concern in that connection and asked the Government of Zaire for official information on the alleged presence, residence and legal status of Denard in its territory.

29. The Permanent Representative of Zaire to the United Nations at Geneva replied on 23 July 1991 to the Special Rapporteur's request for information in the following terms:

> "I have the honour to refer to our recent meetings and to confirm that there has been no contact or contract between Zaire and Bob Denard. Those who are spreading these rumours should be the ones to answer for their totally gratuitous assertions."

30. The Special Rapporteur sent a letter to all Member States of the United Nations on 4 and 5 July 1991, asking them for information relating to the following:

(a) Any mercenary activities which, in violation of the sovereignty and laws of their country, might have occurred or be occurring on their territory (recruitment, use, financing, transport or training of mercenaries);

(b) Any mercenary activities on the territory of another country which impaired or might impair the sovereignty of their State and the exercise of the right of their people to self-determination;

(c) Any mercenary activities on the territory of another country which impaired or might impair the sovereignty of other countries in their subregion, region or continent, and the exercise of the right of other peoples to self-determination;

(d) Domestic legislation currently in force and international treaties to which their country was party, relating to the prohibition of mercenary activities and their use as a means of violating the sovereignty of other States and impeding the exercise of the right of peoples to self-determination. In that letter, the Special Rapporteur again invited those States which had not yet done so to consider the possibility of ratifying or acceding to the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, pointing out that the entry into force of that international instrument, which confirmed the legal status of the many United Nations resolutions and declarations condemning mercenary activities, would be an effective means of preventing such activities and protecting all States against violations of their sovereignty and attempts to impede the exercise of the right of their peoples to self-determination.

31. In a communication dated 17 July 1991, the Permanent Representative of Saudi Arabia to the United Nations at Geneva replied to the Special Rapporteur's letter referred to in the previous paragraph, stating as follows:

> "Concerning the information you requested from our Government, we do not allow any mercenary activities inside our territory and we do not face any impairment of our national sovereignty from adjoining territories or from other States. We uphold the safety of the right of self-determination for all peoples.
>
> "With regard to the question of our Government acceding [to] or ratifying the International Convention referred to in your communication, this question will be forwarded to our Government for its decision."

32. By communication of the same date, the Permanent Representative of Belgium to the United Nations at Geneva informed the Special Rapporteur that the questionnaire had been sent to the competent Belgian authorities and that he would send their reply without fail as soon as he received it.

33. The Permanent Representative of Bolivia to the United Nations at Geneva replied to the Special Rapporteur by communication dated 18 July 1991, stating: "your request for information has been transmitted to the Government and I hope to be able to provide a reply within the specified period".

34. On 24 July 1991 the Permanent Representative of Mauritius to the United Nations at Geneva informed the Special Rapporteur that:

> "Island States such as Mauritius are, as you are aware, particularly vulnerable to such external influences and I am therefore certain that our competent authorities, to whom your request has been transmitted, will do their utmost to provide you with any available information on this issue.
>
> "The attention of our authorities has also been drawn to the possibility of acceding to the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, which was adopted by the General Assembly on 4 December 1989."

35. The Permanent Representative of Kenya to the United Nations at Geneva acknowledged with appreciation receipt of the Special Rapporteur's letter by communication dated 25 July 1991.

36. On 30 July 1991, the Permanent Representative of Senegal to the United Nations at Geneva sent a communication to the Special Rapporteur informing him that its content would be communicated as soon as possible to the competent Senegalese authorities, who would without fail give it the full attention it deserved.

37. On 20 August 1991, the Special Rapporteur sent a letter to the Permanent Representative of South Africa to the United Nations at Geneva, as had been agreed at their meeting on 3 July 1991. In this communication the

Special Rapporteur referred to their conversation on the current process of democratization and the abandonment and dismantling of the apartheid regime under the leadership of President De Klerk. He also mentioned the possibility of visiting the country so that he could observe on the spot the easing of tensions and the investigations being carried out on South African officials and citizens for activities directed against the black population, including organizing and carrying out illegal activities employing mercenaries. He appended a list of all the allegations received during the period of his mandate relating to the involvement of South African government and military officials and citizens in planning, organizing and conducting mercenary activities to oppose the exercise of other southern African peoples' right to self-determination and to attack opponents of the apartheid regime.

38. By a communication dated 9 August 1991, the Permanent Representative of the Comoros to the United Nations acknowledged receipt of the Special Rapporteur's letter, stating that it had been brought to the attention of his country's Ministry of Foreign Affairs.

39. The Permanent Mission of Chile to the United Nations at Geneva forwarded his Government's reply to the Special Rapporteur's letter by note verbale dated 26 September 1991, which reads as follows:

> "Fortunately, no mercenary activities of any of the types indicated in the inquiry - recruitment, use, financing, transport or training of mercenaries - have ever taken place in Chile.
>
> "Nor have any mercenary activities in the territory of another country which do or could affect the sovereignty of the State of Chile and the exercise by the Chilean people of self-determination come to the notice of the Chilean Government.
>
> "Likewise, the Government of Chile has received no reports on the existence of mercenary activities in the territory of another country which do or might affect the sovereignty of other countries in our subregion, region or continent.
>
> "Lastly, nothing in our Penal Code, Code of Military Justice or any other special law sanctions the activities, recruitment, use, financing, transport or training of mercenaries. In any event I should inform you that, besides the legal texts I have mentioned, the rules laid down in the 1949 Geneva Conventions and Additional Protocols thereto form part of Chile's wartime law and define with the force of domestic legislation the status of combatants in international armed conflicts and conflicts in the territory of a contracting party."

40. The Ministry of Foreign Affairs of Guinea replied to the Special Rapporteur's letter by note verbale dated 20 September 1991. Besides information on Guinean constitutional provisions and treaties and general condemnation of mercenary activities, the note verbale contains a serious report of mercenary activities carried out by the forces of Charles Taylor which are said to be affecting Guinea (see below, chap. IV, sect. C).

41. In a letter dated 18 October 1991, the Special Rapporteur thanked the Ministry of Foreign Affairs of Guinea for its note verbale and asked for more detailed information on the circumstances, dates, sites, victims and damage caused by the acts of aggression it reported and, especially, the reportedly mercenary character of the forces led by Charles Taylor.

42. The Permanent Representative of Paraguay to the United Nations in Geneva transmitted his Government's reply to the Special Rapporteur's letter by letter of 10 October 1991, which reads as follows:

> "Following inquiries on the subject, I wish to inform you that no mercenary activities of any kind exist in our country (recruitment, financing or training of mercenaries), or in other countries in the region, subregion or continent, which might or do affect the sovereignty of the State of Paraguay. As regards domestic legislation and international treaties relating to mercenaries, we can report that Paraguay ratified the Geneva Conventions of 12 August 1949 on 23 October 1961, and the Additional Protocols of 8 June 1977 on 30 November 1990."

43. By letter dated 25 September 1991, the Acting Minister for Foreign Affairs of Cuba, Alcibiades Hidalgo, informed the Special Rapporteur as follows:

> "No mercenary activities such as the recruitment, use and financing, transport or training of mercenaries have taken place in our country.
>
> "Cuba has been the victim of a mercenary attack mounted under the auspices of the United States Government, which recruited, trained and financed the mercenary action, using for the purpose nationals of Cuba resident in the United States. Accordingly, the Cuban Government maintains that nationals should also be regarded as mercenaries when they attack their own country while in the pay of a foreign Power.
>
> "This is a matter of particular sensitivity to our Government when it comes to signing an International Convention against the Recruitment, Use Financing and Training of Mercenaries.
>
> "Given the seriousness of mercenarism and the reprehensible behaviour of those who attack a country chiefly in pursuit of economic advantage, and given that the recruitment and financing of individuals for use against another State constitutes an attack on peace and security and a breach of international law, Cuban legislation prohibits and punishes this crime.
>
> "Mercenarism is categorized as a crime under the Cuban Penal Code. Article 119 of the Code severely punishes anyone who engages in such acts. Moreover, the Penal Code covers the crime of mercenarism under chapter III, which is devoted to the punishment of crimes against peace and international law."

44. The Deputy Permanent Representative of Austria to the United Nations at Geneva sent a letter to the Special Rapporteur on 4 November 1991, stating as follows:

> "Until now, neither activities concerning the recruitment, use, financing, transport or training of mercenaries in Austria nor any such activities in neighbouring States directed against Austrian interests have come to the knowledge of Austrian authorities.
>
> "According to Art. 279 para. 1 of the Austrian Penal Code (Federal Law Gazette No. 60/1974) anyone who establishes an armed association without legal authorization, or who leads such an association, or who promotes its membership, recruits or trains for combat or who fosters such an association by means of munition, transport, telecommunication or money commits a crime and is liable to imprisonment of up to three years, irrespective of whether the activities were directed against Austria or a third party.
>
> "It should be mentioned in this context that according to Art. 320 para 2 of the Austrian Penal Code the recruitment of volunteers for war or any armed conflict is also penalized."

45. The Permanent Representative of Zimbabwe to the United Nations at Geneva transmitted his Government's reply to the Special Rapporteur's inquiries on 8 November 1991; the reply included reports of a number of mercenary activities which had affected the country (see below, chap. IV, sect. F).

46. The Permanent Representative of Tunisia to the United Nations at Geneva replied to the Special Rapporteur's letter by letter dated 13 November 1991, which reads as follows:

> "There are no mercenary activities in Tunisian territory and there are no believable reports of such activities in the territory of neighbouring countries.
>
> "Tunisian legislation prohibits the activities of mercenaries in its territory and establishes severe penalties; the Penal Code and Code of Military Justice prescribe heavy penalties for acts threatening the domestic or external security of the State and those responsible for acts of rebellion or recruiting for foreign Powers.
>
> "Tunisia is a party to the OAU Convention for the Elimination of Mercenarism in Africa adopted by the OAU Council of Ministers on 23 June 1977 (Act No. 84-4 of 3 April 1984, approving Tunisia's accession to the OAU Convention for the Elimination of Mercenarism in Africa, Official Gazette No. 83 of 6 and 10 April 1984).
>
> "As regards the International Convention against the Recruitment, Use, Financing and Training of Mercenaries adopted by the United Nations General Assembly on 4 December 1989, the Tunisian Government will submit that Convention to the Chamber of Deputies for approval in due course."

III. SITES OF MERCENARY ACTIVITY

47. According to the background material examined by the Special Rapporteur, mercenary activity on a massive scale usually occurs in connection with international armed conflict. In the former case, a State engaged in armed conflict with another resorts to the recruitment, financing, use and training of mercenaries as a means of aggression against the other State involved in the conflict, thereby strengthening its own military capacity or avoiding greater military losses. Mercenary activity, in addition to being illegal per se, may also be linked to another act contrary to international law such as the military aggression of one State against another, the invasion and occupation of territory or armed intervention with the object of interfering in internal affairs in violation of the principles of respect for territorial integrity of States or non-intervention. Mercenary activities are also undertaken by third States, when they choose to get involved in an international armed conflict directly or indirectly and use mercenaries as one means of doing so.

48. Mention should also be made of mercenary activities in armed conflicts which are not international conflicts as such. Historical processes, the increasingly complex nature of social relations, economic interests and the web of interactions between a State's internal politics and the international situation have led to situations of internal armed conflict and "low-intensity wars". The Special Rapporteur has received information concerning the presence of mercenary activities in the following internal armed conflicts:

(a) Mercenaries of French nationality took part in the internal armed conflict in Myanmar, fighting on the side of the Karen rebel movement. One of their number, Olivier Thiriat, died in May 1989 during an encounter with the Government forces. Another French mercenary died in November 1990 during the course of another encounter;

(b) Mercenaries of Israeli nationality are reported to have been recruited, financed and used both by the Government of Sri Lanka and by the armed rebel organization, the People's Liberation Organization of Tamil Ealam (PLOTE) to provide military training;

(c) The mercenary Jack Terrell, a United States national, allegedly participated in mercenary recruitment operations in the Philippines in May 1990.

49. There are other cases where the allegation that mercenaries were used in internal conflicts could not be verified because the proper information channels were lacking and because the official sources maintained a stubborn silence when questioned about the presence of mercenaries. The Special Rapporteur did not have an opportunity to assess objectively the presumed mercenary activity in internal conflicts in places such as Afghanistan, Chad, Lebanon, Sudan and Yugoslavia.

50. The third form of mercenary activity is that resorted to by third States intervening in an internal armed conflict in order to further their own interests. This has been the most common form of mercenary activity in Africa in recent years. In the conflicts in Angola and Mozambique, mercenaries from a third Power in the region, South Africa, were involved.

51. A fourth form of mercenary activity can be observed when a third State resorts to the use of mercenaries in order to violate the right of other peoples to self-determination. This is what occurred, for example, when previous South African Governments used mercenaries to resist the exercise by the people of Botswana, Lesotho, Seychelles, Swaziland, Zambia and Zimbabwe of their right to self-determination.

52. The presence of mercenary activity in internal armed conflicts is indicative of the development of this type of illegal activity. Diverse political, ideological, economic or strategic security interests and the advantage of not appearing to be directly involved have led third States to encourage mercenary activity through covert operations or via one of the parties to the conflict. This type of mercenary activity, which will invariably be officially denied by the third State involved, also violates the principles of non-intervention and of respect for the right of peoples to self-determination.

53. The Special Rapporteur has noted that mercenary activities can be a means of reinforcing a party to an international or internal armed conflict. However, that does not mean that mercenary activities are present only in armed conflicts; they may also occur in isolation or in association with relatively unpredictable changes in the internal circumstances of a State or the international situation. There are mercenary resources and organized groups available to undertake mercenary activities which may have diverse immediate objectives but in essence violate sovereignty and the right to self-determination. In this regard the Special Rapporteur can mention the following:

(a) Recruitment, financing and use of the mercenaries of Israeli nationality Colonel Yair Klein, an officer of the reserve of the Israeli army and President of Hod Hahanit, a company specializing in the provision of escort training services and military instruction, Colonel Amatzia Shaoul, Colonel Itzhak Shoshani, Colonel Moises Spector, Colonel Abraham Tzadaka and Air Force Colonel Yaacov Biran, all officers of the Israeli Defence Forces reserve and employees of the above-mentioned company, to provide military instruction to a Colombian group operating in the Magdalena Medio area and armed by a drug-trafficking cartel;

(b) Recruitment, financing and use of the British mercenary Peter MacLees, former Sergeant-Major of the British Special Forces, the Australian mercenary Terry Tagney and another nine mercenaries to train assault squads of Colombian drug traffickers in the Magdalena Medio and southern border areas of Colombia. Each mercenary received US$ 20,000 to provide instruction in the use of explosives, night-vision binoculars and grenade rifles, and to give training in shooting techniques, as was admitted by Terry Tagney in statements made in London in August 1989.

The former President of Colombia, Virgilio Barco, stated in his speech to the General Assembly on 29 September 1989 that his Government viewed with extreme concern the activities of foreign mercenaries who had trained and assisted drug terrorists in Colombia. The great strides forward made by the Government in its fight against drug trafficking has yielded results, including the elimination of mercenary activity on Colombian territory;

(c) The mercenary behaviour exhibited by several leaders of the Tamil organization PLOTE who used their leadership position in order to receive money and weapons, putting their organization and military apparatus at the service of the Maldivian leader named Luthufi in an attempt to install him in power in the Maldives in November 1988;

(d) Finally, the recruitment, financing and use of mercenaries of South African nationality by officials of the Government of Zaire to perform acts of violence and intimidation against militants of several political parties and student groups was reported by the President of the Zaire League of Human Rights, Bwana Kabue, on 4 July 1991.

54. Mercenary resources and organized groups are available to undertake mercenary activities having a variety of purposes, for example, to reinforce insecure political interests, to assist or impede the actions of opposition groups, and even to engage in actions which are in themselves unlawful and prohibited, including terrorist acts and drug- and arms-trafficking operations, and paid assassinations. The motives may vary: the mercenaries may be ex-servicemen with a compulsion to make war, fanatical adherents of an ideology incompatible with democratic tolerance, or inherently intolerant people or groups. In every case, however, although this is habitually denied, venality and the professional practice of war are invariably concomitant features of the personality found among those foreigners who plan and execute mercenary activity.

IV. MERCENARY ACTIVITIES IN AFRICA

A. General aspects

55. The process of decolonization set in motion at the end of the Second World War led to the emergence of an ever greater number of new sovereign and independent States on the African continent. That process, although generally peaceful, was difficult in the case of the colonies of southern Africa, where there were internal conflicts which nurtured mercenary activities.

56. With the accession of the Portuguese colonies of Angola and Mozambique to independence, the racist regimes of Rhodesia and South Africa became more vulnerable. South Africa became increasingly isolated when Robert Mugabe's Zimbabwe African National Union (ZANU) came to power in Rhodesia, which then became Zimbabwe and was immediately recognized as a sovereign and independent State by the international community.

57. Thereafter the Government of South Africa, in pursuance of its policy of apartheid, provoked violence and military tension in southern Africa through the acts of aggression it perpetrated against the right to self-determination

of the peoples of the region in order to defend its political, economic, social and strategic interests. South Africa continued to occupy the territory of Namibia even though the United Nations General Assembly decided in 1956 to terminate its League of Nations mandate and despite the 1971 Judgment of the International Court of Justice that its presence in Namibia was illegal. In addition, South Africa continually persecuted the South-West Africa People's Organization (SWAPO), the legitimate represenative of the Namibian people.

58. Succeeding Governments of South Africa ordered acts of aggression against the Angolan, Mozambican and Namibian peoples' right to self-determination; terrorism and sabotage in Botswana and Lesotho, and terrorism in Swaziland and Zimbabwe; and organized commando raids on Zambia. In these actions they often resorted to the recruitment, financing and use of mercenaries. Some they recruited among the African population taking advantage of their alienation and abject poverty, and others came from countries in North and South America, Western Europe and Oceania.

59. In defence of the apartheid regime, which vests political power and economic and social control in the 16 per cent of the population made up of whites, the Government of South Africa also resorted to the recruitment, financing, use and training of mercenaries to carry out acts of aggression, repression and intimidation against members of its internal opposition movements, chiefly the leaders, cadres and members of the African National Congress (ANC), the Pan Africanist Congress of Azania (PAC) and the South African Communist Party.

60. The Special Rapporteur has studied the trend of political and social events in southern Africa and, in that context, the recourse to mercenary activities to oppose the right to self-determination of the peoples of the region. He has noted that since the second half of 1988 the southern part of the African continent has been experiencing a period of continuing pacification and an easing of tensions and that it is less prone to violence and armed conflicts and more amenable to negotiation and political agreements, which are the most rational and efficient ways of settling disputes peacefully and of affirming and guaranteeing that human rights are fully respected and that the right to self-determination is fully exercised.

61. Namibia is now a sovereign, free and independent State. South Africa has withdrawn from its territory, SWAPO, is fully exercising its political rights and the first free and representative elections have been held to form a Government deriving its legitimacy from the will of the people. The application of Security Council resolution 435 (1978) of 29 September 1978, can now be considered a <u>fait accompli</u>. The New York Accords of 22 December 1988 brought about peace between Cuba and South Africa and led to the withdrawal of the Cuban troops stationed in Angola, which was complete by 25 May 1991. In addition, on 31 May 1991 the President of Angola and the head of UNITA formally signed peace agreements in Lisbon to inaugurate a cease-fire that, fortunately, has so far held, thus initiating a process of democratization, pacification and national reconciliation that is to culminate

in the holding of free, multiparty general elections between September and November 1992. The Special Rapporteur must also drew attention to the partial cease-fire agreement between the Government of Mozambique and Resistência Nacional Moçambicana (RENAMO), signed in Rome on 1 December 1990.

62. The South African Government of President F.W. De Klerk has set in motion a major process of détente, political negotiation and national reconciliation that has led to repeal of the laws that formed the pillars of the apartheid regime and should, if it is pursued and strengthened, eventually empower the majority population fully to enjoy its civil, political, economic, social and cultural rights. The Special Rapporteur feels he must point out, however, that the process is running into obstacles in the shape of long-standing distrust between the various ethnic groups that make up the black majority and, more important, resistance organized by some members of the white minority, who have formed a number of vigilante-style racist movements, some of which have recently begun recruiting, financing and using mercenaries to carry out acts of aggression and intimidation against the black majority and to use violent means to fight the dismantling of apartheid.

63. The conclusion of peace and cease-fire agreements in southern Africa is having the effect of reducing the number of mercenaries in the region. Mercenaries were instrumental in upholding the strategic, political and economic interests of South Africa. As the armed conflicts cease or diminish in intensity, the mercenaries seem to be redeploying towards South African territory where some of them have been recruited by racist organizations whose avowed intent is to stop the dismantling of apartheid and indeed to reverse the process.

B. Angola

64. The Special Rapporteur paid special attention to the use of mercenaries in Angola and he conducted a mission there in 1988 at the height of the armed conflict. Since then events have taken a turn towards peace, and a peace process and national reconciliation have begun. There follows a summary of the main events in the Angolan conflict and the positive changes in the situation up to the signing of the peace agreements in Lisbon which are now being executed. Angola was a typical case of an internal conflict being waged at the same time as an international conflict and in which mercenaries were used.

65. The Angolan people's struggle against 500 years of Portuguese colonial rule intensified after 1961. Even after the attainment of independence on 11 November 1975, however, the people did not achieve full self-determination: the Government was soon faced with armed opposition from the Frente Nacional para a Libertação de Angola (FNLA) and UNITA, the latter supported by the Government of South Africa. Immediately after the proclamation of independence, South African troops invaded the south of the country in support of UNITA, penetrating more than 400 miles into Angolan territory. On 24 August 1981, the South African army carried out a military operation against Namibian members of SWAPO in southern Angola.

66. During the entire conflict in Angola, there was active fighting on two related fronts: one on the border with Namibia, where there was direct armed military confrontation with South African troops, including the thirty-first and thirty-second battalions, composed of mercenaries in the pay of South Africa, and one inside Angolan territory against guerrilla action by UNITA, backed by the Government of South Africa and by other Powers, which also used mercenaries to reinforce its military capacity. During the war, mercenaries of different nationalities also engaged in acts of sabotage on Angolan territory, always in support of UNITA or on the instructions of the South African authorities.

67. The Government of Cuba, under an agreement with the Government of Angola, sent troops and civilian coopérants. The latter performed administrative, health, education and construction tasks.

68. On 20 July 1988 the Governments of Angola, Cuba and South Africa established a link for the first time between South Africa's acceptance of Security Council resolution 435 (1978) on the independence of Namibia and the Cuban Government's agreement to withdraw its troops stationed in Angola. On 22 December 1988 the New York Accords provided for the phased total withdrawal of Cuban troops by July 1991. These tripartite agreements brought about peace between Cuba and South Africa and made it possible to begin withdrawing Cuban troops from Angola. The Special Rapporteur made reference to some of these favourable developments in the Angolan situation in the report he submitted to the General Assembly in 1989 (A/44/526, annex) and to the Human Rights Commission in 1990 (E/CN.4/1990/11).

69. On 22 June 1989, through the good offices of the Zairean President a historic meeting took place in Gbadolite, Zaire, between the President of Angola, José Eduardo dos Santos, and the leader of UNITA, Jonas Savimbi, and culminated in a cease-fire agreement. Unfortunately, owing to the shooting down of an Angolan commercial aircraft and a UNITA attack on one of the country's hydroelectric plants the cease-fire lasted only a few days.

70. Thanks to the mediation of Portugal, a process of negotiation between representatives of the Government and UNITA leading to the democratization and pacification of the country began in 1990. The process was later joined by representatives of the United States and the Union of Soviet Socialist Republics, as observers. However, the war continued: UNITA forces succeeded in occupying the strategic south-eastern city of Mavinga on 8 May 1990, killing 139 government soldiers, capturing 100 tanks and other military vehicles and driving government troops back to their base at Cuito Cuanavale.

71. On 13 July 1990, the Minister for Foreign Affairs of Angola, speaking in Harare, Zimbabwe, reported the use, recruitment and financing of foreign mercenaries by UNITA. The mercenaries were for the most part in charge of operating ground-to-air missiles and other sophisticated military equipment, and were also instructed to attack the capital's electric power supply.

72. While fighting and the Portuguese-mediated negotiation process were going on simultaneously, important political changes were also taking place in late 1990: on 9 December the Movimento Popular de Libertação de

Angola (MPLA), the only party in the Government, agreed to initiate a process of constitutional reform leading to the creation of a multiparty system, which enabled the Popular Assembly to adopt a law on 26 March 1991 establishing such a system, thus putting an end to the one-party system that had been in effect since independence. In addition, the MPLA formally renounced Marxism-Leninism in favour of a social democratic ideology.

73. In early 1991, the UNITA representative in Washington, Mr. Jardo Mulekalia, stated his organization's agreement in principle with the peace plan put forward by Portugal. On 23 January 1991, the official Angolan news agency reported that the Government was also in agreement in principle with the plan. However, the sixth round of negotiations, which took place on 6 and 7 February, ended with no important agreements being reached. The main bone of contention appeared to be the Government delegation's demand that a specific date be set for the entry into force of a cease-fire; it proposed 15 April, while the UNITA delegation wanted no cease-fire before an agreement was reached on holding multiparty general elections. Once agreement was reached on the date of the elections, UNITA argued, a cease-fire date could be set; it proposed 30 June, that is, after the last Cuban troops were to be withdrawn. A joint communiqué issued on 8 February by the delegates of the mediating Power, the United States and the Soviet Union acknowledged that the sixth round of negotiations had broken down.

74. On 1 April 1991, heavy fighting broke out between the Angolan army and UNITA near Luena, capital of the eastern province of Moxico and site of the largest military and air base of the Angolan army in eastern Angola. UNITA was reported to have attacked with eight battalions - a total of 3,000 men - and to have used long-range artillery. According to statements made on 13 April 1991, by the chief of operations on the Angolan army staff, Col. Higinio Carneiro, UNITA must have received advice from foreign military officers, probably South African, in preparing the attack, judging from the accuracy of the long-range artillery fire. On 10 April, Angolan national radio reported that 160 civilians had died during the battle of Luena, including 54 children. The fighting for the control of the provincial capital ended on 15 May when the cease-fire took effect, leaving a total of 300 dead - civilians and military personnel. Considering the composition of the UNITA military forces, the possibility that UNITA continued to use mercenaries during these last engagements cannot be ruled out.

75. The cease-fire went into effect at midnight on 15 May 1991 under the agreements reached at Estoril on 1 May 1991 between the head of the Government delegation, Mr. Lopo do Nascimento, and UNITA's Vice-President and chief of delegation, Mr. Jeremías Chitunda, with Portugal as mediator.

76. The formal signing of the Estoril Peace Agreement took place on 31 May 1991 in the Palácio das Necessidades, the seat of the Portuguese Ministry of Foreign Affairs, between the President of Angola, José Eduardo dos Santos, and the Chief of UNITA, Jonas Savimbi, in the presence of the Secretary-General of the United Nations, Javier Pérez de Cuéllar, the Secretary-General of OAU and President of Uganda, Yoweri Museveni,

United States Secretary of State James A. Baker, the then Soviet Foreign Minister Aleksandr A. Bessmertnykh, and the mediator in the negotiations and Secretary of State for Foreign Affairs of Portugal, José Manuel Duaro Barroso. It was the culmination of over a year of negotiations successfully mediated by Portugal under the auspices of the United Nations and OAU with the sustained support of the United States and the Soviet Union.

77. The Estoril Agreement can be summarized under the following headings: a cease-fire, the same one that took effect on 15 May 1991 at midnight and has fortunately held so far; free multiparty general elections for the presidency and the legislature at a date to be set between September and November 1992; regrouping of army members into 27 predetermined zones and of UNITA members into 23 zones, with a view to demobilizing between 100,000 and 120,000 troops on either side, and integration of the remaining troops into a new national army of 50,000 men; creation of a 10-kilometre demilitarized zone; and establishment of a joint political-military commission composed of MPLA and UNITA members to oversee the implementation of the agreements. The Agreement having been signed, it can be assumed that the mercenary elements have left Angolan territory.

78. Simultaneously with the signing of the Peace Agreement, the Security Council, by resolution 696 (1991) of 30 May 1991, approved the UNAVEM II operation, whose effect was to enlarge the staff and strengthen the role of the United Nations Angola Verification Mission, known as UNAVEM I. The main tasks of UNAVEM II will be to observe and verify compliance with the cease-fire agreeemnt and to observe the electoral process. UNAVEM II was approved pursuant to a proposal of the Secretary-General, and its military component is administered by Major-General Edward Ushie Unimna of the Nigerian army. UNAVEM II began operations on 1 July 1991.

79. The Joint Political-Military Commission that is to oversee implementation of the peace agreements held its first meeting in Luanda on 7 June 1991 in the presence of observers from the mediating country, the United States and the Soviet Union. On 4 July it held its second meeting, also in Luanda and in the presence of observers from the same countries. Both meetings dealt with monitoring the transition period that began with the signing of the peace agreements and will end with the holding of general elections and the installation of the new Government. The process has not been without difficulties: on 11 September 1991, the temporary representative of UNITA in Lisbon, Marcial Dachala, declared that the organization was considering withdrawing from the Joint Political-Military Commission until certain conditions were met "that would make it possible to work with the MPLA in a spirit of fairness and sincerity". In spite of those statements, the process has continued uninterrupted up to the time of writing this report.

80. On 30 June 1991, the Joint Political-Military Commission and members of UNAVEM II paid a visit to UNITA headquarters in Jamba in the extreme south-east of the country. On that occasion, the UNITA leader, Jonas Savimbi, hailed the end of the war in the presence of Minister Lopo do Nascimento and

members of the UNITA staff, and swore to do everything possible to ensure scrupulous compliance with the signed agreements. Savimbi returned to Luanda on 29 September 1991 after a tour of the cities of Huambo, Lobito and Lubango in the south.

81. The conclusion of the peace agreements means and end to foreign military aid and the beginning of a process of national reconciliation that should lead Angola toward democracy and prosperity. It should also mean the end of the recruitment, financing and use of mercenaries to carry out acts of violence against the Angolan people's right to self-determination. More than 16 years of civil war have resulted in more than 100,000 dead, 40,000 wounded, including a large number of women and children, close to 500,000 refugees abroad and 600,000 displaced persons within the country, as well as losses estimated at 20 billion dollars. In addition, even though it is one of the African countries richest in natural resources, with large reserves of petroleum, natural gas, diamonds, copper, phosphates and uranium, and excellent coffee-growing conditions, Angola must now begin to clear its agricultural land of mines laid by UNITA and return to civilian life those members of the army and UNITA who will not be part of the new unified national army. The present army is estimated at 150,000 men and UNITA is said to have 50,000 combatants, while the new unified national army will be 50,000 strong. Clearly, 150,000 combatants will have to be demobilized and returned to civilian life. That may cause serious social problems since the majority are unskilled. On the other hand, large areas of the countryside are already crowded with internally displaced persons. On 8 July 1991, a start was made on separating the two forces and redeploying them to predetermined bases as the cease-fire enters a new consolidation phase. The international community, which is effectively carrying out verification and control of the peace agreements through UNAVEM II, must also cooperate in the task of returning the demobilized combatants to civilian life and contribute to the political stability and development of the country.

C. Guinea

82. The Special Rapporteur has received information to the effect that in West Africa, the internal armed conflict in Liberia has affected the neighbouring States of Guinea and Sierra Leone. Under the terms of a treaty, military forces from those two countries have come to the aid of the Government of Liberia, helping to maintain public order in the Liberian capital. Nevertheless, the civil war is continuing and the violence in Liberia has also made itself felt in the neighbouring countries.

83. In a note verbale dated 20 September 1991, the Ministry of Foreign Affairs of Guinea informed the Special Rapporteur of acts detrimental to its sovereignty committed by armed rebel groups in Liberia acting against that country's Government. The Guinean communication states:

> "Despite the legislation and regulations enacted to avoid the incursion of troublemakers and persons intent on undermining State sovereignty, the south-west of Guinea has experienced some very flagrant violations in 1991 by armed men of the Liberian rebel faction led by Charles Taylor.

"These repeated incursions have left victims among the neighbouring populations. During these offensives the rebels have torn down and burned the Guinean national flag.

"A decisive counter-attack by the Guinean Army has been necessary to restore security in these areas."

84. Guinea has in fact been affected by the scale of the internal armed conflict in Liberia, to which it has given military aid under agreements signed by the two States. The Guinean communication adds:

"The Guinean Government, anxious to respect the principles of people's right to self-determination and of peaceful coexistence, and basing itself on the international legal instruments to which it has subscribed, has sent a military contingent to operate alongside the loyalist army on the basis of a decision by the Mediation Committee of ECOWAS, which instituted an intervention and peace-keeping force called the Economic Community Monitoring Group (ECOMOG)(ECOWAS)."

85. Further on, the communication from the Ministry of Foreign Affairs of Guinea states that Sierra Leone has also been attacked by the forces led by Charles Taylor, which it does not hesitate to qualify as mercenary forces. In that connection, the communication states:

"After the attacks by Charles Taylor's mercenaries on the region of the Republic of Guinea that borders Liberia, it was the turn of the Republic of Sierra Leone to undergo attacks by these mercenaries. It goes without saying that these acts are flagrant and repeated violations of the sovereignty of the States attacked and of the right of their peoples to self-determination.

"The peoples of Liberia, Guinea and Sierra Leone have always had close and fraternal relations, as attested by the bilateral and trilateral agreements concluded among their respective Governments.

"There is no doubt that this conflict is undermining peace and security in the West African subregion."

86. These events indicate the extent of the upheavals affecting Liberia. The international press has made ample reference to them. Nevertheless, the Special Rapporteur is anxious to stress the epithet of "mercenaries" which the Guinean communication applies to the rebel forces led by Charles Taylor. He has asked the Government of Guinea for further information on the reported mercenary nature of the forces. This information, together with any other information obtained, will help to determine the nature of the reported events.

87. The international press has also reported the accusation made on 3 November 1991 by Charles Taylor that the President of Sierra Leone, Joseph Momoh, has allowed former soldiers of the Government of Liberia entrenched on the frontier with Sierra Leone to launch repeated attacks against his forces.

D. Mozambique

88. Since its rise to power after the proclamation of independence, the Frente de Libertação de Moçambique (FRELIMO) has had to contend with armed opposition by RENAMO. The former Government of Rhodesia helped RENAMO to organize and to launch its first armed offensives in reprisal for the assistance FRELIMO provised to the forces of Robert Mugabe during the war of independence and the fact that the Government of Mozambique supported the sanctions adopted by the United Nations against the racist regime of Rhodesia.

89. When Zimbabwe was established as a sovereign State, officials of the South African Government took over the training and equipping of RENAMO. On 14 October 1981, three demolitions and explosives experts of South African nationality were involved in an act of sabotage in which a segment of the Beira-Umtali railroad, which links Zimbabwe to the principal port of Mozambique, was mined. The South African nationals died in an armed confrontation with a Mozambican Army patrol.

90. In an interview published in the 7-13 June 1991 issue of The Weekly Mail, Garth Barrett, a former member of the Special Air Services élite corps, a fighter for white supremacy in Rhodesia and architect of the plan for the invasion of Seychelles by mercenaries admitted that, in his capacity as commander of the sixth Reconnaissance Command of the South African Defence Corps, he had led an invasion of Matola, Mozambique, in 1981.

91. In March 1984, Mozambique and South Africa signed the Nkomati Accord, in which each party undertook to prevent its territory from being used to launch acts of war, aggression or violence against the other party. After this Agreement, however, matters did not improve: South Africa continued to maintain RENAMO bases and communication centres in its territory and to provide it with financial and logistical support.

92. Attacks by RENAMO on the railways and highways Zimbabwe uses to channel its import-export trade prompted Zimbabwe to send in troops with the consent of the Government of Mozambique.

93. In 1989, as a result of mediation by the President of Zimbabwe, Robert Mugabe, and the President of Kenya, Daniel Arap Moi, initial, indirect contacts were made between the Government of Mozambique and RENAMO. In December 1989, both Heads of State believed that the time was ripe for the initiation of direct negotiations between the two parties. Thus, the first official meeting since the beginning of the conflict between a representative of the Government and a representative of RENAMO was held in Lisbon on 15 May 1990. Subsequently, both parties requested Italian mediation, which led to the opening of negotiations, as a result of which a partial cease-fire agreement was reached in Rome on 1 December 1990.

94. Under the Rome Accord, the contingent of 7,000 soldiers from the Zimbabwean Army was to withdraw from the areas it was occupying and regroup along the Limpopo and Beira corridors linking the Mozambican ports of Maputo and Beira with Zimbabwe. In exchange, RENAMO undertook to respect a

cease-fire along those corridors. The Mozambican Army would move to areas formerly occupied by the Zimbabwean Army. Another major corridor, the Nacala-Malawi corridor, which links the northern Mozambican port of Nacala with Malawi, was not mentioned in the Accord.

95. In the first week of 1991, RENAMO staged five attacks along the Beira corridor and one along the Limpopo corridor, thereby violating the partial cease-fire agreement. On 3 and 4 January 1991, RENAMO troops attacked the Zimbabwe-Beira railroad and, on 4 January, they attacked stores and restaurants in the Beira suburbs. On 7 January they attacked Chimoio, the second largest city along the Beira corridor. On 9 January, there was an armed confrontation in Motasse, in the Limpopo corridor, in which two RENAMO fighters were killed and two Mozambican Army soldiers were injured. RENAMO fighters also attempted to sabotage the oil pipeline along the Beira corridor, which Zimbabwe uses to export most of its refined oil.

96. RENAMO fighters also launch attacks along the Nacala corridor, which is not covered by the partial cease-fire agreement. In one of those attacks, an ambush on the road to Nacala, six people died and another six were injured.

97. The war has continued in 1991, in the zones not covered by the Rome Accord, with its customary brutality. On 6 January 1991 RENAMO fighters executed 18 persons in the village of Chirindzene, in the southern province of Gaza. Moreover, after the withdrawal of the Zimbabwean Army from the central Gorongosa region, RENAMO launched an intensive campaign in an attampt to seize control of the region. The same thing happened when the Zimbabwean Army withdrew from the Tete highway linking Zimbabwe and Malawi, which had been attacked on a number of occasions by RENAMO fighters. On several occasions, the attacks led to the deaths of people driving vehicles along the highway and blocked the transport of United Nations food aid to the 820,000 Mozambican refugees in Malawi.

98. It should be mentioned that the city of Beira has sustained repeated attacks by RENAMO forces. In November 1991, about 100 members of that organization attacked the Beira Airport control tower, killing two people and destroying an emergency generator. These events show that the armed conflict is continuing despite the peace negotiations in progress.

99. The fighting in Mozambique has turned that country into one of the poorest in the world and resulted in over 100,000 deaths, displaced 4,600,000 within the country and caused 1,280,000 to seek refuge outside. It has also caused the deaths of 500,000 children under five years of age who would be alive today if the conflict had not erupted. The conflict is also particularly cruel: in the interview mentioned above (para. 90), Garth Barrett described cases in which RENAMO fighters forced the family members of their victims to eat the corpses of executed relatives: "Those are acts of barbarity that Blacks are committing against Blacks in Africa. But we cannot be naive about the way war is conducted on this continent", he said. In August 1987, RENAMO fighters summarily executed 380 persons in Homoine in the southern province of Inhambane. On 29 October 1987, 280 people died in an attack on a convoy 80 kilometres north of the capital.

100. The Special Rapporteur is anxious to reiterate that halting attacks on the civilian population is the first step to making headway towards a just and democratic peace in Mozambique, one which would guarantee respect for the right to life, integrity, personal freedom and safety of all citizens, and freedom of expression, association and participation in national political life. Similarly, only by halting all foreign intervention and interference - whether direct or indirect, overt or covert - can the full exercise of the right of the Mozambican people to self-determination be guaranteed and the presence of mercenaries in that country be ended.

E. Zaire

101. International pressure is rightfully being brought to bear on the Government of Zaire, in response to the Zairian people's demands for democratization. The thwarted efforts of the national conference on the political future of the country, which began on 7 August 1991 after several postponements, led to the serious events of late September and 21 to 23 October 1991.

102. Marshal Mobutu Sese Seko's regime, a symbol of order, formerly enjoyed the protection of some Western countries, especially Belgium, France and the United States of America, which provided it with military and economic assistance. During the 1970s, French paratroopers interceded in Shaba province against separatist forces in the region. However, these same States have now had to act to protect foreign residents in the country from the bloody disturbances that have been set off, and are today, together with the rest of the international community, demanding definite and unequivocal democratization, an end to the excessive repression and genuine investigations and punishment for those responsible for the criminal acts and pillage that have occurred.

103. The first disturbances took place on 2 September 1991 in Kinshasa, where barricades were set up in poor neighbourhoods and shops and offices sacked, leaving three persons dead. The disturbances grew in scope on 23 September, when soldiers from the military bases at Kokolo and Ndjili Airport revolted over their low salaries and set off for Kinshasa. The soldiers sacked shops, and demonstrators set fire to buildings and vehicles. The following day the disturbances spread to the cities of Kisangani and Lubumbashi, and riots also occurred at the Kamina military base near the frontier with Angola. This caused 600 French paratroopers and foot soldiers to be sent from their bases in Chad and the Central African Republic, together with 500 Belgian paratroopers, who evacuated their own nationals and other foreigners residing in the country. At least 117 persons died, hundreds were wounded, and two foreign women were raped during these disturbances.

104. To end the chaos and the tumult in the streets, the President, after consultations with the leaders of 10 opposition political parties, on 29 September 1991 appointed as Prime Minister the leader of the opposition party, "Union for Democracy and Social Progress", Etienne Tshisekedi, who made an attempt to form a Government of national salvation. General Manzembe Mayibanga was replaced as head of the armed forces by General Mahele Liyeko,

until then Chief of Military Intelligence. Tshisekedi scheduled the national conference to be held during the month of October. On 21 October, however, he was removed from office by the President and replaced with another opposition leader, Bernardin Mungul-Diaka. The removal of Tshisekedi led to fresh riots in Lubumbashi, Kisangani, Kolwezi, Likasi and Mbuji-Mayi. At the time of writing this report, Zaire had not yet managed to regain its stability or make democratic changes that would place the country on the path towards the kind of political, social and economic order under which the human rights of its population could be respected.

105. The Special Rapporteur has received information to the effect that mercenaries took part in the above-mentioned disturbances, instigating them in some cases and actively participating in criminal acts in others. Some of these mercenaries, in unofficial command uniforms, allegedly spread terror in the streets of Kinshasa during the nights of 23 and 24 September 1991 and in Lubumbashi on 21 and 22 October. These foreigners were not identified or prosecuted.

106. The Special Rapporteur received reports that the French mercenary Bob Denard, a temporary resident of South Africa, travelled to Zaire to train the presidential guard. This was strenuously denied by the Government in a communication addressed to the Special Rapporteur by the Permanent Representative of Zaire to the United Nations at Geneva on 23 July 1991.

107. It should be pointed out, however, that according to statements by President Mobutu on Radio France Internationale (RFI) reproduced in the 9 November 1991 issue of Le Monde, four former members of the French military, currently in retirement, have "expressed the desire to come back and help Zaire. These are people of high military value, recommended by your former army Chief of Staff, General Jeannou Lacaze". A French military assistance mission has been in Zaire throughout 1991, and is said principally to have trained the 31st paratrooper brigade of the Zairian army. South Africa is also said to have trained the soldiers of the Kitona military base near the frontier with Angola and to have supplied defensive weapons and armoured vehicles. Since 1982, Israel has allegedly been training the presidential guard, soldiers at a base in Shaba province and members of the Kinshasa artillery brigade, in addition to supplying weapons.

108. Quite apart from lawful and legitimate military assistance programmes and the unlawful and illegal presence of mercenaries, the Special Rapporteur feels it necessary to say that the international community must help Zaire to overcome its current political instability and social turmoil. The Western countries have supported the Zairian people's demands for respect for life, fundamental freedoms and security. This means probing more deeply into the incidence of mercenary activities and, when such activities are proven, taking steps to punish any mercenaries involved and guarantee the Zairian people's full exercise of its sovereign rights and its right to self-determination.

F. Zimbabwe

109. In reply to the request for information sent by the Special Rapporteur to all United Nations Member States, on 8 November 1991 the Government of Zimbabwe sent an extensive reply that objectively reviews Zimbabwe's path to independence and the various attacks it sustained, several of which involved definite participation by mercenaries who were used to undermine Zimbabwe's sovereignty and its people's right to self-determination. The Special Rapporteur feels it would be extremely useful to transcribe this communication, which is an important testimony against mercenary activities:

> "Introduction. It is necessary to examine the circumstances in which Zimbabwe achieved independence, before making an appreciation of mercenary activities in the context of Zimbabwe and the southern Africa region.
>
> "The civil war waged against the Rhodesian regime by the Zimbabwe Nationalist Forces resulted in the Rhodesian Army recruiting ex-soldiers from all over the world, some were veterans of British Army campaigns, such as Cyprus, Aden and Borneo and others of the Vietnam war, to make up its numbers. These men were within the strict definition of the word, mercenaries 'hired soldiers in foreign service'. They fought in specialist Rhodesian Security Forces Units such as the SAS, the Selous Scouts and the Rhodesia Light Infantry, alongside native born Rhodesians.
>
> "The Rhodesian Intelligence Service recruited mercenaries from Mozambique, who were trained, armed and financed before being deployed back into Mozambique to harass the Frelimo Government. This was done to retaliate against the Frelimo Government for permitting the Zimbabwe African Liberation Army (ZANLA) to maintain bases in Mozambique from which they waged the liberation war in Rhodesia. The Lancaster House Agreement of 1979 and impending independence in 1980 led many to review their future prospects within independent Zimbabwe. A number of former Rhodesian soldiers who could not accept the new order left the country to settle in the Republic of South Africa and elsewhere in the world giving up military life. Some dissatisfied with the outcome of the war and the establishment of Zimbabwe joined the South African Defence Forces (SADF), where they found places within Special Forces and other clandestine units, and thus became mercenaries in terms of the accepted definition. The Mozambique mercenaries then known as the Mozambique National Resistance were translocated from Zimbabwe, prior to independence, into the Northern Transvaal, where they formed the nucleus of what was later to become RENAMO.
>
> "Having determined how mercenary elements came to be incorporated within the South African Defence Force, the scene is set to consider the role they were called upon to perform, and what subsequent effect they had on Zimbabwe and neighbouring territories within the southern Africa region. The changing political climate currently affecting the Republic of South Africa has led to more controls being exercised over the South African Defence Forces, as evidenced by revelations of the

clandestine activities of units such as the notorious Civil Co-operation Bureau and methods used in an attempt to maintain the status quo. There is no longer the same proof that South African mercenaries are actively subverting Zimbabwe or adjacent territories, and this communication must therefore for the most part consider the historical role they played in local and regional destabilization.

"Each of the questions posed by the Special Rapporteur will now be examined and answered:

"Question One (Information relating to any mercenary activities, which in violation of the sovereignty and loss of your country, might have occurred or be occurring on your territory (recruitment, use, financing, transport or training of mercenaries)):

- Recruitment of former members of the Rhodesian Security Forces by the South African Defence Forces took place in the immediate pre- and post-independence periods, once it was apparent the then regime would be replaced by a majority rule government in Zimbabwe.

- Not all recruited personnel went to the Republic of South Africa, although attested and given military ranks in the SADF some were left in Zimbabwe to act as agents, engage in espionage and lend support to clandestine operations mounted in Zimbabwe by SADF Special Forces, which included mercenary elements within their numbers.

- Incidents of sabotage and political violence directly attributable to the SADF Special Forces took place in Zimbabwe between 1980-1988. Those mercenaries amongst them used local knowledge gained during their service with the Rhodesian Security Forces to perpetrate these acts.

- In 1982, dissident elements of the former Zimbabwe People's Revolutionary Army, some who had been integrated into the Zimbabwe Defence Forces and others who had been demobilized rebelled against the Government in the South West of Zimbabwe.

- The dissidents were unable to sustain their effort and resistance was crumbling, until SADF mercenaries arranged for the recruitment and training of some of these bandits in the Republic of South Africa, and their redeployment into Zimbabwe with new arms, ammunition and equipment. The new grouping was named "Super ZAPU".

- The effect of this external assistance was to extend banditry for another three or four years, resulting in numerous deaths, injuries and the destruction of property. It also put back development and rehabilitation schemes needed to rebuild that area of the country in the aftermath of the war of independence.

- Mercenary elements were introduced into Zimbabwe from the Republic of South Africa on sabotage missions. One group was intercepted in the South-East of the country en route to destroy an important rail junction. Four of those killed were identified as former Rhodesian soldiers. The South African Government publicly acknowledged they were attested members of the SADF, but alleged they were in Zimbabwe contrary to instructions on a mission to rescue certain former colleagues held in a detention centre.

- The Zimbabwe Government has never knowingly permitted mercenaries to be recruited on its territory, and there is no evidence to suggest any such activity has ever occurred save in the context of the second paragraph of this chapter.

- The Government of Zimbabwe presently has complete control of the country. The Defence Forces, civil authorities and security services are active throughout and are able to state unequivocally that there are no mercenary elements with the borders of Zimbabwe in violation of her sovereignty.

"Question Two (Information relating to any mercenary activities on the territory of another country which impair or may impair the sovereignty of your State and the exercise of the right of your people to self-determination):

- RENAMO, whose formation was described in the introduction to this communication, when under the control of the SADF, became a far more potent force, and is now so entrenched within Mozambique that currently peace talks are under way with the Government to resolve the state of civil war.

- It is known that some mercenaries in the early days of RENAMO incursions from the Republic of South Africa were actually deployed with them into Mozambique, although all connections with the SADF are now alleged to have been severed following the signing of the Nkomati Accord.

- RENAMO elements under SADF mercenary sponsorship, in addition to fighting the Mozambique Government waged an economic war against Zimbabwe. Destroying the fuel storage tanks at the port of Beira, and attacking the Beira/Mutare oil pipeline on no less than 127 occasions during the period 1982-1990.

- RENAMO attacked the Beira/Mutare railway line - Zimbabwe's direct rail link to the Indian Ocean - on 292 occasions between 1986-1991. Some 372 ambushes of vehicular traffic on the adjacent Beira/Mutare Road, occurred during the same period.

- Intervention, by the Zimbabwe Defence Forces to protect these vital links to the sea, was used as a justification for mercenary inspired, cross border raids to be mounted by RENAMO against the civilian population residing along much of the length of the Mozambique/Zimbabwe frontier. Murder, rape, kidnapping, arson, mutilation and atrocities were resultant, in areas of the country contiguous to Mozambique.

- Communities were resettled under Defence Force protection to counter these raids, causing an additional economic burden to Zimbabwe.

"Question Three (Information relating to any mercenary activities on the territory of another country which impair or may impair the sovereignty of other countries in your subregion, region or continent, and the exercise of the right of other peoples to self-determination):

- Again the mercenary activities are of an historic nature, but many are known to have served in Namibia during the pre-independence conflict, and others fought in Angola in support of UNITA as members of the SADF.

- Former Rhodesian mercenaries took part in an abortive coup against the Seychelles Government when infiltrated from South Africa posing as a touring sports team.

- There are also indications that South African based mercenaries were involved in the Comoro Island coup.

"Question Four (Information on domestic legislation currently in force and international treaties to which your country is party, relating to the prohibition of mercenary activities and their use as a means of violating the sovereignty of other States and impeding the exercise of the right of peoples to self-determination):

- The Law and Order (Maintenance) Act, Chapter 65 of the Statute Law of Zimbabwe makes it unlawful for quasi military organizations to be organized, trained or equipped within Zimbabwe.

- The Act also forbids the possession of arms of war and other offensive weapons or material by any unauthorized person - the ultimate penalty for committing such an offence being a sentence of death.

- The definition of arms of war includes all weaponary associated with modern warfare; and thus the legislation is more than adequate to combat any mercenary activities.

- The Firearms Amendment Act No. 37 of 1981 provides for a minimum sentence of five years' imprisonment for possession of a firearm manufactured after the year 1900, and is good alternative legislation for the unlawful possession of a firearm.

"Conclusion. The first steps, on the path leading to what is hoped will be irrevocable change in the Republic of South Africa, and the formation of a government fully representative of the population as a whole, have already been taken at a political level.

"The Government of President De Klerk has already acted to curb the excesses of the military in general and the special forces in particular. However, in assessing the future role of the military, it is considered essential to ensure that those amongst them, who may be correctly termed as mercenaries, are closely monitored at an international level.

"There are sufficient authorities to suggest, that mercenaries or soldiers of fortune, show little inclination to pursue other life styles but will seek to offer their services in areas of conflict so long as age and health permits."

110. The information supplied by the Government of Zimbabwe indicates that this country was no exception in southern Africa as regards mercenary activities that have had a negative effect on its territory, violated the human rights of its population and undermined its people's exercise of their right to self-determination. Zimbabwe makes it clear, however, that those events have gradually been overcome, although in recent years it has sustained repeated attacks by RENAMO, which has a mercenary element in its ranks. In any event, the Zimbabwe Government's statement is extremely significant in that it links stability and peace in the region to positive and irreversible changes in South Africa that will reduce the military apparatus and, in particular, that country's special forces. It also warns of the need to put a definite end to mercenary activities and expel anyone who is inclined to become involved in armed conflicts in other countries.

G. South Africa

111. The southern African people's right to self-determination and effective enjoyment of their human rights have been impeded for many years by mercenary activities. In his previous reports, the Special Rapporteur has referred to reports of recruitment, financing, use and training of mercenaries in which officials of the South African Government and South African nationals appeared to be implicated, either directly or indirectly. While the current policy of the South African Government can be credited with major changes aimed at the elimination of the apartheid regime, it is important to cite the criminal acts which, according to the reports submitted, illustrate a deliberate, systematic policy of human rights violations and attacks on the right of various peoples to self-determination. The democratization begun in South Africa by the Government of President F.W. De Klerk, which has raised the hopes of the majority of his countrymen and the attention of the international community, will have to be bolstered by a keen awareness which neither conceals nor denies the disastrous mistakes of the past; that is the only way to avoid the danger of repeating them in the future.

112. In sections B and D of this chapter, the Special Rapporteur has referred to South African officials and nationals resorting to mercenary activities as a means of impeding the self-determination of the Angolan and Mozambican peoples. It should be pointed out that officials of the South African Government were also accused of resorting to mercenary activities in order to impede the right of the Namibian people to self-determination. Battalion 31, a special non-conventional unit of SADF, established on the border of Namibia and Angola with mercenaries of Angolan, Canadian, Chilean, United States and Zimbabwean origin and from various Western European countries, carried out various military operations against Namibian resistance to South African occupation. Another special non-conventional unit of SADF, Battalion 32, also operated against the right of the Namibian people to self-determination. Known as the "Buffalo battalion", it was organized secretly in the north of Namibia with mercenary elements from Holden Roberto's Frente para la Libertação de Angola, which was demobilized in 1975. In this way SADF opted to assign higher-risk or particularly cruel military operations to special non-conventional units of the army. South African officials were also accused of recruiting members of the Bushmen ethnic group of Namibia as mercenaries, taking advantage of their dire poverty and marginal status. Mercenaries of Israeli origin were also recruited, used and financed, according to reports, by officials of the Government of South Africa to participate in what was known as "Operation Safari", carried out in 1976 against members of SWAPO in Namibia.

113. Between 1980 and 1985, SADF military bases installed in the territory of Namibia were used as mercenary training camps. In 1986, a mercenary of French nationality, detained in Cabilda in the north of Angola, confessed to having been commissioned by the South African Government to sabotage and destroy bridges in Namibian territory. This mercenary was sent to Mozambique one year after his detention in a prisoner exchange. Two mercenaries of Netherlands and Swedish nationality, respectively, confessed that they had been recruited, used and financed by South African authorities after being detained for breaking into the SWAPO office in London and stealing documents. According to several reports, South Africa also masterminded the use of mercenaries to commit acts of terrorism and sabotage in the territories of Botswana and Lesotho; to commit acts of terrorism in Swaziland and Zimbabwe; and to launch commando attacks in Zambia. SADF also recruited mercenaries in Zimbabwe between 1980 and 1985. Some of them were former members of the "Selous Scouts" and "Special Air Services" (SAS) and were detached to Battalion 32, the secret "Reconnaissance Units", "Brigade 44" of the "Pathfinder Company", and to military units in the bantustans. The former commander of the "Selous Scouts", Colonel Ron Reid-Daly, was subsequently appointed Commander-in-Chief of the Transkei Army in 1981.

114. Members of SADF and the South African National Intelligence Service also appear to have organized, planned and carried out the mercenary invasion and attempted coup d'état mounted in the Seychelles in November 1981. Among the mercenaries recruited for the operation were Mike Hoare, a resident of South Africa, whose background includes mercenary activities in Zaire; Peter Duffy, who also operated in Zaire; Jeremiah Puren, a retired South African Air Force officer; Martin Dolinchek, an agent of the National Intelligence Service of South Africa; and two United States citizens,

Barry Gribben and Charles Dukes. It was pointed out that a number of the mercenaries who carried out the operation went unpunished. Officials of SADF and the National Intelligence Service who took charge of mercenary recruitment were not punished either. Officials of the South African Government apparently also provided financing for around 30 mercenaries of French and Belgian origin in the presidential guard of the former President of the Comoros, Ahmed Abdullah Abderemane. These mercenaries, led by Colonel Bob Denard, participated in the coup d'état of 26 November 1989 that resulted in the death of President Abdullah. The Comoros was a supply base for Mozambican rebels from RENAMO. According to statements by the Minister for Foreign Affairs of South Africa, Mr. R.F. Botha, made on 4 December 1989, Denard was granted temporary residence in South Africa pending the outcome of negotiations on his return to France. Moreover, according to a letter dated 12 September 1990, addressed to the Special Rapporteur by the Permanent Representative of South Africa to the United Nations Office at Geneva, the Comoros officially requested South Africa to allow Colonel Denard to continue residing temporarily in South Africa. When the matter was referred to the French authorities, they expressed the same opinion, according to reports.

115. The Special Rapporteur has also received various reports concerning the presence of mercenaries in SADF and in the South African police during one of the most violent periods in the implementation of apartheid. According to information from the South African Ministry of Defence, in 1982 there were 2,000 foreigners in SADF. From 1980 to 1982, SADF allegedly recruited Chilean and Israeli mercenaries through various international networks, including the Soldiers of Fortune organization. From November 1980 to January 1982, Brigade 44 of the Pathfinder Company was made up entirely of mercenaries. From 1980 to 1985, Battalions 31, 32 and 201 of SADF and the secret reconnaissance units of the South African army also had mercenaries among their members.

116. The Special Rapporteur has been informed by reliable sources that during the 1980s, the Civil Cooperation Bureau (CCB), a unit of the SADF Special Forces, the so-called "UNIT C1", a South African police squad based at Vlakplaas, near Pretoria, and the Security Department of the Johannesburg City Council were recruiting, financing, training and using mercenaries. In his testimony before the Harms Commission, the Chief of the Special Forces, Major-General Eddie Webb, stated that CCB had 139 members and a larger number of people who were "members without knowing it". It has an annual budget of $11 million, according to a statement made before a parliamentary budget committee on 7 March 1990 by the former Chief of SADF, General Jannie Geldenhuys. Its objective is to terrorize radical leftists by means of violence and intimidation, as Brigadier Floris Mostert stated before the Harms Commission. CCB was responsible, as the Chief of Staff of Military Intelligence, General Witkop Badenhorst, admitted before the Harms Commission, for a bomb attack on the Early Learning Centre at Athlone which did not cause any deaths. It is also said to have been implicated in the murders of Dullah Omar, a prominent opposition lawyer, the journalist Gavin Evans and Anton Luboski, who was murdered at Windhoek.

117. Moreover, UNIT C1, a South African police squad, was allegedly responsible for the murder of the lawyer, Griffiths Mxenge, according to information obtained from one of its members, Butana Almond Nofomela, a police officer, in November 1989. This officer confessed that he had also taken part in seven other murders and in many kidnappings. The details of Nofomela's confession were confirmed by another member of UNIT C1, Police Captain Johannes Dirk Coetzee, in an interview which he granted on 17 November 1989 to the newspaper Die Vrye Weekblad from his exile in Mauritius. Coetzee was a local commander of UNIT C1. Its top leader was Brigadier Willem Schoon. UNIT C1 is alleged to have been responsible for the following crimes: the murders of African National Congress (ANC) members Zakhele Nyanda and Keith McFadden in November 1983 at Manzini, Swaziland; Sizwe Kondile, a university student and a member of ANC, after he had been detained by police in Lesotho; and two ANC members known as "Vusi" and "Ghost", after they had been kidnapped in Maputo, Mozambique, in 1980. It should be noted that, according to Coetzee's statements, UNIT C1 also recruited, used, financed and trained former ANC members, known as "Askaris", to carry out their illegal activities.

118. The Security Department of the Johannesburg City Council allegedly also carried out illegal activities through the recruitment, financing and use of mercenaries. According to testimony before the Hiemstra Commission, the Department was implicated in the murders of David Webster, a member of Five Freedoms Forum (FFF), an anti-apartheid organization, on 1 May 1989 and Ian Mullen, also a member of FFF, who died in a fire at his home one month after Webster's assassination; acts of intimidation against Soweto youths; and setting fires in Yeoville, a suburb near Johannesburg. The Security Department was headed by Major Frik Barnard, a military intelligence officer.

119. Those responsible for the murder of Dulcie September, the ANC representative in France, Luxembourg and Switzerland, which occurred in Paris on 29 March 1988, are alleged to have been mercenaries, as revealed by a Swedish mercenary, Herman, to ANC representatives in Zimbabwe. Furthermore, a mercenary who was a national of New Zealand attempted to place a bomb in the residence of Thabo M'Beki, the ANC Information Director, in Lusaka, in 1986. He was detained and, having confessed that he was working for the South African Government, was sentenced to 18 months in prison. Those who carried out an attack against a South African lawyer, Albie Sachs, who lost an arm when a car exploded outside his house in Maputo, are also alleged to have been mercenaries. In March 1988, a group of mercenaries recruited, financed and used by the South African Government carried out an attack on a farm inhabited solely by civilian members of ANC, 40 kilometres from Quela in northern Angola. Sixty-seven people died in the attack. Those who made an attempt on the life of Godfrey Matsope, the ANC representative in Belgium, in March 1988, are said to have been mercenaries.

120. The accusations against the South African Government with regard to the recruitment, financing, use and training of mercenaries relate both to actions to prevent the full exercise of the right to self-determination of the peoples of Angola, Botswana, Lesotho, Mozambique, Namibia, Seychelles, Swaziland, Zambia and Zimbabwe, and to the use of violence against black South Africans opposed to the apartheid system who live both within and outside

South Africa. As he pointed out in his most recent report to the Commission on Human Rights (E/CN.4/1991/14, para. 54), the Special Rapporteur believes that there is a cause-and-effect relationship between the policy of apartheid, which in itself constitutes a system of racial segregation whereby rights are granted to some (whites) while being denied to others (blacks), and the violence which constantly recurs within South Africa, in neighbouring countries and in other areas in which an organized anti-apartheid resistance movement has always existed.

121. The Special Rapporteur also deems it necessary to refer to the recruitment, financing and use of mercenaries by various racist organizations opposed to the current repeal of apartheid, relaxation of tensions and promotion of national reconciliation being carried out by President De Klerk. Many of these organizations were formed recently, in 1990, and are characterized by the use of violence in an attempt to frustrate the process of abolishing apartheid and to suppress the rights and fundamental freedoms of the black population. The following is a list of some of the main such organizations: Commandos of the Afrikaner Resistance Movement (AWB); Aquila; the White Freedom Movement (BBB); the White Front (BF); White Security; the Flamingos; the Boere-Weerstandsbeweging (BWB), allegedly the armed wing of the Boer State Party (BP); the Boer Freedom Movement (BVB); the Boer Resistance Movement (BWB); Brandwag; the Congregation of Chosen People; the Bonnet Commando; Power Action Afrikaner Nationalism (MAN); the Odal Clan; the Order of the Boer People; the Order of Death; the World Apartheid Movement; Wit Boereleer; the White Freedom Army; the White Commando; and the White Wolves.

122. White Security (Blanke veiligheid) has approximately 4,000 members and three aircraft, with which it flies over the nearby black township of Thabong, in the Orange Free State. It is said to have been responsible for the deaths of two people in Welkom, where it has imposed a curfew on blacks, beginning at dusk. One of its founders, Hendrik Steyn, a former sergeant-major in SADF, was convicted of placing a bomb in the headquarters of the National Union of Mineworkers on 9 June 1990. Another organization, Wit Boereleer, claimed responsibility for placing a bomb on 6 July 1990 at a bus and taxi station in Johannesburg used primarily by blacks. Twenty-seven people were injured in the explosion. AWB allegedly recruited a former Nazi SS commander to carry out an assassination attempt against President De Klerk and ANC President Nelson Mandela in June 1990. Two members of the Order of Death, Cornelius Lottering and Fanie Goosen, were sentenced to 24 and 13 years in prison, respectively, for, among other crimes, placing a bomb in the apartment of Jani Allen, a columnist for The Sunday Times. Lottering was also convicted of murdering a taxi driver, Pototo Makgalomolo, on 29 August 1989. In his deposition, Lottering stated that he had committed the crimes for his people and as acts of war. He added that he had killed the taxi driver because he was black and therefore, his natural enemy. It should be noted that the self-styled World Apartheid Movement recruited, financed and used the services of a Belgian mercenary, Jean Bultot, as an instructor in the use of military weapons.

123. On 22 June 1991, a meeting was held at Sandton, Johannesburg, between representatives of the Government, ANC, the Pan Africanist Congress of Azania (PAC) and the Inkatha Freedom Party, with a view to establishing a

preparatory committee to draw up proposals for putting an end to the acts of violence, including those involving mercenaries, and restoring peace. It was the first time that the principal figures on the South African political scene had met to discuss ways of putting an end to the violence affecting the country. It was also the first occasion on which members of the Government and of PAC had met officially. Only the representatives of the racist organizations were absent. The meeting was sponsored by the churches.

124. In 1991, the South African Parliament and the Government adopted measures leading to profound changes in the legal system with a view to the total abolition of apartheid. On 5 June 1991, Parliament repealed the Land Acts, which had led to the forced displacement of nearly 3.5 million blacks and the expropriation of their land. On the same date, Parliament abrogated the Group Areas Act, of 1950, which assigned a specific place of residence to citizens on the basis of their race. By 1984, according to official information, this Act had resulted in the expulsion of 126,000 families who lived in an area assigned to another racial group. Subsequently, on 17 June, Parliament repealed the Population Registration Act, which classified persons from birth according to their race and which had implications for all civil transactions and contracts. The repeal took effect on 30 June. Previously, individuals were classified as whites, Asians, Indians, Cape Coloured, other Coloureds, Malays, Griquas and other racial categories. There was also the strange category of "honorary whites" which was generally granted to diplomats and businessmen. These legislative reform measures involved the repeal of three Acts which had constituted the legal pillars of the apartheid system. In this way, they continue the legislative process begun on 15 October 1990 when Parliament abrogated the Reservation of Separate Amenities Act.

125. On 21 June 1991, Parliament amended the Internal Security Act of 1982, reducing to 10 days the period for which an individual can be detained without being brought before a court. Formerly, the police could legally detain an individual in secret for an indefinite period, which generally ranged from a few days to more than three years. On the same date, Parliament authorized pro-communist propaganda, thus following up the legalization of the South African Communist Party in February 1990. At the same time, the South African Government released approximately 1,000 political prisoners. Another 1,000 persons, regarded by the Government as common prisoners and by ANC as political prisoners, are still in dention.

126. The mere announcement of the Government's intention to promulgate these measures prompted a strong reaction from members of the Conservative Party and racist organizations. The spokesman for the Conservative Party, Ferdi Hartzenburg, stated on 3 February 1991 that his party would go into action to fight for the survival of the white people. On 27 February, Gawie Volschenk regional commander of the far-right organization Afrikaner Resistance Movement (AWB), announced the formation of a new, even more radical organization, the Boer Commando, which would lead an uprising of the Boer nation to defend its land. In June 1991, Jan Hoon, a Conservative member of Parliament, stated in an address to Parliament that those whom he represented would rather die than give up their land.

127. Despite opposition from the Conservative Party and the extremist organizations in favour of maintaining apartheid, and despite the clashes among different ethnic groups, it is significant that the process is continuing and that people are responding positively to the difficulties involved in implementing it. In this context mention should be made of the 14 September 1991 peace agreement between President De Klerk and 25 political and trade-union leaders, including the leaders of ANC, the Inkatha Party and the South African Communist Party. The agreement binds the parties to work together for peace through the establishment of a national peace committee and establishes codes of conduct for both the South African police and the political parties. It prohibits militant members of the political parties from carrying weapons in their demonstrations and states that violent and inflammatory language against political opponents shall cease. Mention should also be made of the establishment of a code of conduct for SADF, making officers and enlisted men personally liable when they act in violation of the Constitution and legislation; it states explicitly that a member of the military is not obliged to carry out an order that violates the Constitution or legislation, and recognizes the status of conscientious objector.

128. Finally, the Special Rapporteur deems it necessary to reaffirm that the abolition of the apartheid system in South Africa, the strengthening of the current moves towards peace and democracy and an increase in civic awareness among the population will eventually - soon, it is to be hoped - mean an end to the use of repressive methods to impose racist policies and, as a logical consequence, an end to the practice of fomenting mercenary activities.

V. EVOLUTION OF THE CONFLICT IN CENTRAL AMERICA

129. In his third, fourth and fifth reports (E/CN.4/1989/14, A/44/526 and annex and E/CN.4/1990/11), the Special Rapporteur analysed the presence of mercenary activities in Central America based on reports submitted by the Government of Nicaragua. He reported that a number of organizations were responsible for recruiting, financing and training mercenaries to fight on the side of the "Nicaraguan resistance" (contras) in its opposition to the Nicaraguan Government of the period. As indicated in the above-mentioned reports, these activities were conducted through international networks that became involved in the conflict - such as the Civilian Military Assistance (CMA), founded in July 1983 by Thomas Posey, Brigade 2506, Frank Camper's Recondo Military Training School and the World Anti-Communist League (WACL).

130. Although the main centre of the conflict in Central America was Nicaragua, the region also suffered as a result of the rebellion by the Frente Farabundo Martí para la Liberación Nacional (FMLN) against the Government of El Salvador and by the Unidad Revolucionaria Nacional Guatemalteca (URNG) against the Government of Guatemala. The five countries of Central America were affected to varying degrees by the armed violence which devastated the region.

131. The Special Rapporteur noted with satisfaction the agreement on the "Procedure for the establishment of a firm and lasting peace in Central America", signed by five Central American Presidents at Guatemala City

on 7 August 1987, at the Esquipulas II summit meeting, which initiated a procedure for ending foreign intervention in the region through assistance to irregular forces or insurrectionist movements; established that no State Party would permit its territory to be used to launch acts of aggression against another State Party; set up security, verification and control mechanisms and established national reconciliation commissions and mechanisms for dialogue within each country. This Agreement is a milestone on the road towards achieving peace in the region and guaranteeing full exercise of the right to self-determination of its peoples, through free elections and the strengthening and developing of democratic regimes.

132. The procedure initiated by the Esquipulas II Agreement continued with the signing of the following agreements: La Garita de Alajuela, Costa Rica, in January 1988; Costa del Sol, El Salvador, in February 1989; Tela, Honduras, in August of that same year; San Isidro de Coronado, Costa Rica, in December 1989; Montelimar, Nicaragua, in April 1990; and Antigua, Guatemala, in June 1990. The United Nations contributed to their implementation through the International Support and Verification Commission (CIAV) and the United Nations Observer Group in Central America (ONUCA). The most recent expression of this procedure of pacification, cooperation and integration in Central America was the meeting of the five Heads of State of the region which took place in San Salvador on 17 and 18 July 1991. At that time, the Central American Presidents strongly condemned terrorism and acts of destabilization against democratic processes and the use of violence as a means of achieving political objectives.

133. The Special Rapporteur must report that he has not received further reports regarding the presence of mercenaries in Central America. As pointed out in paragraph 23 of this report, the Government of Nicaragua communicated officially to the Special Rapporteur on 16 January 1991 that "the causes that gave rise to the military conflict [and] provoked its charges that mercenaries were being used against its territory and its inhabitants have ceased to exist and thus it deems it advisable to ask the Special Rapporteur to withdraw the charges submitted to him on the matter".

134. Nevertheless, other countries in the region are still affected by internal armed conflict: that is true of the armed political violence which continues to take place in Guatemala and the continuation of the civil strife in El Salvador. It is worth mentioning the mediation efforts made in that country by the Secretary-General of the United Nations who is directing a process designed to put an end to the armed conflict. As a result of this process, the Government of El Salvador and FMLN reached agreement on the promotion, protection and safeguarding of human rights on 26 July 1990 in San José de Costa Rica. In implementation of this Agreement on 26 July 1991, the human rights component of the United Nations Observer Mission in El Salvador, which was established by the Security Council in its resolution 693 (1991) of 20 May 1991, began operations in El Salvador. This is the first time that the Organization has set up an office in a country, with a view to monitoring <u>in situ</u> observance and promotion of human rights. Subsequently, on 25 September 1991, both parties signed the New York Agreement, which recognizes the need to give a final impetus to the process of negotiations taking place and reach as speedily as possible the set of political agreements required to bring a definitive end to the armed conflict.

135. The Special Rapporteur also feels it necessary to draw attention to the meetings in Oslo, El Escorial, Ottawa, Quito, Metepec, Atlixco, Querétaro and Mexico City between representatives of the Government of Guatemala and URNG aimed at bringing the armed conflict to an end and strengthening the democratic process. On 26 July 1991 in Querétaro, Mexico, the two parties concluded an initial agreement on the democratization of the country which reaffirms that the armed forces are subordinate to the civil authorities, orders political repression to cease and establishes that the rights of the indigenous communities will be respected. Talks aimed at concluding a cease-fire agreement continued between 21 and 24 September 1991 under the mediation of Monsignor Rodolfo Quezada Toruño, who reported that that round of negotiations was devoted to the question of enforcing and promoting human rights.

136. On 18 September 1991, the Government of Nicaragua decided to withdraw the application for reparation it had filed with the International Court of Justice against the United States of America for assistance given to the contras and the mining of its ports. It should be mentioned that the International Court of Justice had ruled in 1986 that the amount of reparation would be set through bilateral negotiations, which never took place.

137. Finally, the Special Rapporteur considers that the investigations carried out in 1991 by the Costa Rican Legislative Commission into the "La Penca attack" on the former guerrilla fighter Edén Pastóra, clearly illustrate recourse to mercenary activities during the conflict in Central America. The evidence of mercenary participation which the Legislative Commission gathered should enable the international community to reiterate its rejection and condemnation of such practices, which are used to violate the right of peoples to self-determination, and serve to strengthen legal measures to prevent any type of such activities.

VI. PRESENT STATUS OF THE INTERNATIONAL CONVENTION AGAINST THE RECRUITMENT, USE, FINANCING AND TRAINING OF MERCENARIES

138. On 4 December 1989, the General Assembly adopted the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, in resolution 44/34. The International Convention confirms the legal nature of the many United Nations resolutions and declarations condemning mercenary activities and affirms, in its preamble, that such activities should be considered as offences of grave concern to all States. Mindful of the fact that mercenary activities are resorted to in order to carry out acts contrary to the general principles of international law, such as the principle of sovereign equality of States, the principle of political independence, the principle of respect for the territorial integrity of States and the right to self-determination of peoples, the International Convention establishes that anyone who recruits, uses, finances or trains mercenaries must be punished by law and possibly extradited.

139. In accordance with article 19, the International Convention will enter into force on the thirtieth day following the date of deposit of the twenty-second instrument of ratification or accession with the

Secretary-General. Its entry into force will increase and develop cooperation among States to prevent, prosecute and punish anyone who engages in mercenary activities, will contribute to the eradication of such activities and will promote observance of the purposes and principles of the Charter of the Organization. It will also entail broader, deeper, more precise and more up-to-date international regulations on the subject, which today are limited to the relevant rules of customary international law and article 47 of Additional Protocol I to the Geneva Conventions of 1949.

140. As of the drafting of this report only four States have completed the procedures leading to the expression of consent to be bound by the new International Convention: Suriname, which signed it on 27 February 1990 and ratified it on 19 August of that year; Seychelles, which acceded to it on 12 March 1990; Togo, which deposited its instrument of accession on 25 February 1991; and Maldives, which signed the Convention on 17 July 1990 and ratified it on 11 September 1991.

141. On the other hand, the following 14 States have signed the Convention: Angola (28 December 1990), Byelorussian Soviet Socialist Republic (13 December 1990), Cameroon (21 December 1990), Congo (20 June 1990), Germany (20 December 1990), Italy (5 February 1990), Morocco (5 October 1990), Nigeria (4 April 1990), Poland (28 December 1990), Romania (17 December 1990), Ukrainian Soviet Socialist Republic (21 September 1990), Uruguay (20 November 1990), Yugoslavia (12 December 1990) and Zaire (20 March 1990).

142. The Special Rapporteur, in fulfilment of the mandate conferred specifically by the Commission on Human Rights in paragraph 13 of resolution 1990/7, has again addressed all States Members of the Organization which have not signed the International Convention, calling on them once again to consider the possibility of acceding to the Convention since that would greatly facilitate its prompt entry into force and enhance its effectiveness in achieving the objective of respect for the sovereignty of States and the right of peoples to self-determination. He must needs draw attention to the slowness of the process of expressing consent by means of ratification or accession. In the course of 1991 only one State ratified and one acceded to the Convention. This is clearly hindering enjoyment by the international community of the safeguards established by the Convention for the purpose of preventing and punishing mercenary activities.

143. It should not be forgotten that even without the entry into force of the International Convention, States remain bound to act in this matter in accordance with the applicable general principles of international law and the rules of customary international law. The entry into force of the Convention would help with the clear identification of situations with a mercenary component, the trial and effective punishment of persons implicated in such an offence, preventive cooperation between States parties and the clear definition of competent jurisdiction in each case, and would facilitate extradition proceedings.

VII. CONSEQUENCES ON THE ENJOYMENT OF HUMAN RIGHTS OF ACTS OF VIOLENCE COMMITTED BY ARMED GROUPS THAT SPREAD TERROR AMONG THE POPULATION AND BY DRUG TRAFFICKERS

144. On 5 March 1991, at its forty-seventh session, the Commission on Human Rights adopted resolution 1991/29 without a vote. The Commission reiterated its deep concern at the adverse effect, on the enjoyment of human rights, of persistent acts of violence committed in many countries by armed groups, regardless of their origin, that spread terror among the population, and by drug traffickers (para. 1); requested all special rapporteurs and working groups to continue paying particular attention to the adverse effect on the enjoyment of human rights of such acts of violence committed by armed groups, regardless of their origin, that spread terror among the population, and by drug traffickers, in their forthcoming reports (para. 2); requested the Secretary-General to continue collecting information on this question from all relevant sources and to make it available to the special rapporteurs and working groups concerned for their consideration (para. 4); and decided to continue considering the question as a matter of high priority at its forty-eighth session (para. 5).

145. In fulfilment of the provisions of this resolution, the Special Rapporteur must deal with this question, expanding his thematic report on the use of mercenaries. The second preambular paragraph of the resolution states that armed groups that spread terror among the population and drug traffickers frequently act together. To this tie, the Special Rapporteur should add that of mercenary activities, thus establishing a complex criminal association acting in both the internal sphere and the international sphere, creating situations having multiple destructive effects. At the same time, these acts of violence can affect the sovereignty of a State and the stability of a legitimately constituted Government, be detrimental to the right to self-determination of a people, intimidate and subdue populations by violence, destroy a country's infrastructure and its means of achieving its economic and social development and, at the same time, contribute to the commission of atrocities and crimes against the right to life, to physical and mental integrity, to liberty and security of persons, to political rights, and to the economic, social and cultural rights of the members of a nation.

146. As specified in the fourth preambular paragraph of the resolution, the individual, having duties to other individuals and to the community to which he or she belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the International Covenants on Human Rights. These duties are a corrollary to and a consequence of their rights. Enjoyment of human rights and fundamental freedoms implies intrinsically and essentially the obligation to respect them in the persons of other individuals.

147. At the current stage of development of international law, it has become accepted that States are answerable for the life, liberties and security of individuals, and that they deserve to be denounced and penalized when it is found that there have been deliberate and systematic violations of human

rights that fall within their responsibility and competence. That is the correct approach, and it should be maintained and strengthened since it is fully consistent with respect for the human individual, the primacy of the individual over the State, the democratic principles in effect and national and international obligations on the subject. None the less, and without detriment to these requirements, the social and political realities of the modern world, which are more abundant than and always ahead of codified norms, show that there are complex phenomena of growing autonomy in society and that, as part of this autonomy, critical situations of defiance or unlawful competition may arise which may encroach upon the sphere of action reserved for the State. At a given moment in the history of a country, that is to say "here and now", the possibility and obligation of the State to safeguard human rights and fundamental freedoms of individuals may be neutralized and replaced by armed groups which deliberately spread terror among the population by committing atrocities and crimes in an effort to impose their plans, thereby preventing the State from fulfilling its obligations as an institution.

148. The activity of these armed groups, of the bands of drug traffickers and mercenaries, acting separately or together, is intrinsically illegal and naturally goes against the State as the organized community of a people, defying it, fighting it and seeking to usurp power from it. There are, of course, situations in which the struggle against the State may have a historical and factual basis but, even in such cases, it is unacceptable, from the standpoint of the enjoyment of human rights, that the population should be intimidated and subdued by terror in order to defy the State and that individuals should be cruelly assassinated, mutilated and tortured, or kidnapped, that they should be subjected to extortion, that entire populations should be prevented from exercising their political right to elect and be elected by the vile means of amputating voters' fingers, that children should be used to carry explosives - children who will die when the bombs go off - that the economic infrastructure and cultural heritage of a people should be destroyed or that the corrupting power of drug trafficking should be used to destroy a country's judiciary and its police; that the lives and safety of ministers and places of worship should be attacked in order to prevent religious services from being held and undermine people's faith; these are some of the activities attributed objectively to armed groups which spread terror, drug traffickers and mercenaries in a number of countries.

149. There are some who maintain that compliance with the norms which go to make up the international law of human rights can be required only of States which are parties to the Universal Declaration and to the International Covenants on Human Rights. They state that armed groups that spread terror, drug traffickers and mercenaries have neither signed nor ratified any Covenant. In certain circumstances, according to this school of thought, some armed groups might be under an obligation to comply with certain norms which make up international humanitarian law, codified principally in the Geneva Conventions of 1949 and the Additional Protocols thereto. Over and above such obligations which they had expressly assumed they would have no other limitations on their actions. Those who support this formalistic theory forget that international law is made up of general principles and customary norms, not only conventional norms and that, just as any individual, by the

mere virtue of being an individual, enjoys fundamental rights and freedoms which do not require the prior acknowledgement by the State, so are they bound to respect those same rights and fundamental freedoms in others. They also forget that the actions of groups that spread terror and those of drug traffickers have a significant adverse impact on the enjoyment of human rights of the nationals of various countries.

150. In accordance with the above approach, the Special Rapporteur has considered the charges filed by the Governments of Belgium, Chad, El Salvador, Guatemala, the Islamic Republic of Iran, Peru, the Philippines, and Rwanda with the Centre for Human Rights. He has carefully read the important contributions and developments of theory presented by the Governments of Cuba and Mexico and has taken note of the information supplied by the Governments of Benin, Finland, Myanmar, Namibia, Pakistan, Panama, Papua New Guinea, the Soviet Union and Uruguay. The Special Rapporteur has also learned, from his own sources, of the presence of armed groups that spread terror in Afghanistan, Chile, Colombia, France, Italy, Kuwait, Lebanon, Mozambique, South Africa, the Soviet Union, Spain, Sri Lanka, Turkey and Yugoslavia and also the activities of bands of drug traffickers in Afghanistan, Bolivia, Colombia, Pakistan, Panama, Peru, Turkey, the United States and in various countries of Western Europe. Finally, because of the topic assigned to him, he knows how mercenaries also work with or form armed groups or work for drug traffickers, thereby establishing criminal associations which have appalling consequences for the full enjoyment of human rights.

151. The Special Rapporteur thinks it necessary to point out that many of the charges concerning action by armed groups that spread terror refer to situations of violence, which had the desired effect of preventing entire populations from exercising the right to elect their authorities. Such prevention undermines a fundamental political right, one which is, in essence, a basic human right, and it also causes disorder, since it creates a power vacuum that directly affects the very populations which are prevented, by violent means, from voting. Again in such situations the international community must react by reasserting the unrestricted and effective exercise of such political rights and by making it clear to the armed groups responsible that their acts will be condemned and repudiated.

152. A particular point to notice is that many acts of violence committed by armed groups spreading terror among the population with adverse consequences for human rights occur in countries ruled by democratic regimes appointed in pluralistic, multi-party, free elections. These have nothing to do with national liberation movements or organizations seeking the open, democratic exercise of power; they are the work of fanatical groups espousing dogmatic, totalitarian ideologies, whose political strategy is based on terrorist activity. They exist to oppose democracy, not champion it, although they tend to take refuge in a cynical show of democratic legitimacy, on occasion even seeking international sympathy as a means of shrouding their terrorist practices and criminal ways. The cases of Colombia, Peru and the Philippines clearly illustrate the existence of such groups which, in league with gangs of drug traffickers, often assail democratic regimes and diminish their prospects of advancing and growing stronger.

153. The fundamental human rights of individuals, particularly in the poorest sectors, are those which are attacked directly, often with fatal results. The end does not justify the means; this principle applies to all, not only to States. It follows from this postulate that it is for Governments to defend life, order and legality without transgressing or violating human rights. Nevertheless this defence must also be undertaken by the international community and international organizations, with the condemnation of armed groups that spread terror and of gangs of drug traffickers and mercenaries, in that their activities have an adverse effect on the enjoyment of human rights.

154. In the view of the Special Rapporteur, respect for human rights constitutes a universal principle which does not admit of exceptions; States have a primary and non-transferable responsibility in the never-ending task of promoting human rights. Accordingly, they should strive to defend these rights which are immanent in human beings, irrespective of the problems and difficulties of the circumstances confronting them. Non-governmental organizations should continue to defend human rights, as they have hitherto, and also help to promote a clear understanding of the problems faced in that domain by each separate society, so that States and the international community as a whole, going beyond theoretical debate, may, in those countries beset by extremes of poverty and policies of violence, contribute to the establishment of objective conditions, particularly economic and social conditions, which will allow the effective enjoyment of all human rights.

VIII. CONCLUSIONS

155. From information received by the Special Rapporteur and trends in international events it appears that the armed conflicts in southern Africa and Central America in which mercenary activities have been reported have been moving towards political negotiations and peace.

156. In the case of Angola, the Lisbon Accords between the Government of President Dos Santos and the UNITA guerrilla forces, commanded by Jonas Savimbi, have brought an end to a long and bitter armed conflict in which foreign intervention and the use of mercenaries by UNITA contributed to the prolongation and the bloody nature of the conflict. Seven months on, the Accords are being respected by both parties, and the provisions relating to the demilitarization of the country, reincorporation into civilian life and the formation of a multiparty democratic system are being implemented, all of which should culminate in general elections in 1992. In this connection, the Special Rapporteur is arranging to schedule a visit to Angola during 1992.

157. The armed conflict opposing the Government of Mozambique and the RENAMO guerrilla movement has not changed to any appreciable extent, despite talks aimed at ending it. This conflict, probably the bloodiest in southern Africa, has been characterized by intervention by foreign Powers and the active presence of groups of mercenaries. Negotiations to end the conflict have obtained only partial and short-lived results. Thus, partial cease-fires have been concluded in respect of the corridors linking the ports of Maputo and Beira in Mozambique with Zimbabwe, RENAMO having undertaken to respect the cease-fire in these corridors. Nevertheless, the corridors have been subject

to some military attacks by RENAMO, and in areas not covered by the Rome Accord the war has continued, as has the presence of mercenaries. The Special Rapporteur has received information from the Zimbabwean Government detailing damage to land and property in Zimbabwe resulting from RENAMO activity in the transit corridors.

158. Despite the widespread trend towards reduced tensions as mentioned above (para. 155), politically unstable areas may give rise to outbreaks of armed violence in which mercenaries might reappear. The Special Rapporteur wishes to make specific mention of reports of political violence in Zaire, Liberia and Guinea where actions are said to have been carried out by mercenaries: he has requested more extensive information on the subject.

159. The Special Rapporteur has received consistent reports of involvement by South African Government and military officials in illegal activities directed against the sovereignty and self-determination of the peoples of southern Africa, and the black population of South Africa. Mercenaries have repeatedly been used to engage in various forms of criminal aggression in order to impose, consolidate and protect the racist policy of apartheid, restrict the freedom of the African peoples and prevent the elimination of racial discrimination. This policy has begun to be dismantled since the installation of the Government of President De Klerk, which began a process of democratization and détente and the repeal of apartheid, a development that has awakened positive expectations in the South African people and the international community.

160. Among the more important measures for the promotion of peace in South Africa, mention should be made of the meeting at Sandton, in Johannesburg, held in June 1991, between representatives of the Government, ANC, PAC and the Inkatha party, with the aim of constituting a preparatory committee responsible for formulating proposals to end acts of violence and restore peace. The most important measures, however, are those adopted by Parliament, repeal of the Land Acts of 1913 and 1936 and the Group Areas Act which assigned citizens to live in particular areas depending on their race, both of which were repealed on 5 June 1991, and then, on 17 June, the repeal of the Population Registration Act. These three acts were the legal pillars of the apartheid regime. At the same time the Internal Security Act, under which individuals could be detained for an unlimited period, has been amended, and approximately 1,000 political prisoners have been freed. The various political organizations have agreed, furthermore, to work together for peace through a national committee set up for that purpose.

161. Despite the demonstrable progress that has been made, it would be a mistake to conclude that there is no risk of the process being reversed. Various groups within the white minority population have constituted themselves as racist organizations and have set up paramilitary teams, including mercenaries, to oppose democratization by violent means and to defend apartheid. Moreover, mistrust and tension between various ethnic groups within the black population have continued, at times leading to armed confrontations. The situation is thus fluid, requiring careful monitoring of the continuation of the process by the international community, together with

the maintenance of pressure and the anti-apartheid measures adopted by the United Nations, until the rejected system of apartheid is totally and completely eliminated and replaced by a fully democratic system guaranteeing the full and effective enjoyment of human rights.

162. The peace process in Central America has continued to progress, the periodic meetings of Presidents in order to assess situations and adopt agreements to promote peace, cooperation and Central American integration having proved to be an effective mechanism. The implementation of these agreements has brought an end to the armed conflict in Nicaragua and its repercussions in Honduras and Costa Rica. As a result, reports of foreign intervention and the presence of mercenaries in the region have also ceased. In El Salvador, the armed conflict between the Government and the FMLN guerrilla movement has abated and important progress has been made in political negotiations. There has been significant mediation by the Secretary-General of the United Nations, one result of which has been the establishment in El Salvador of a United Nations observer mission, ONUSAL. The Special Rapporteur has not received any new report of mercenary activities in El Salvador, nor in Guatemala where political dialogue has also begun in order to end the political and military conflict.

163. The International Convention against the Recruitment, Use, Financing and Training of Mercenaries, adopted by the General Assembly in resolution 44/34 of 4 December 1989, needs to be ratified or acceded to by 22 States in order to enter into force. However, to date only four States, Maldives, Suriname, Seychelles and Togo, have completed the process of becoming Parties to the Convention. Further, only 14 other States have signed the Convention. It may thus be concluded that there is some delay in securing the ratifications and accessions necessary for its entry into force, a factor which is impeding cooperation among States in preventing, prosecuting, punishing and eradicating mercenary activities.

164. With respect to Commission on Human Rights resolution 1991/29 of 5 March 1991, on the adverse consequences on the enjoyment of human rights of acts of violence committed by armed groups that spread terror among the population and by drug traffickers, the Special Rapporteur has carried out the Commission's instructions, seeking both to enrich theoretical consideration of the universal obligation, not simply of States, to respect the full and effective exercise of human rights, and to review the existing body of reports, which reveals a dangerous tendency towards acts by armed groups, drug traffickers and mercenaries which, by themselves or together, are spreading terror among the population and impairing the enjoyment of human rights and fundamental freedoms.

165. The State has the primary obligation to respect, protect and defend human rights, without infringing upon them even in situations in which its authority is defied by groups taking up arms against it and against society. But this obligation to respect the rights and fundamental freedoms of individuals extends to all individuals and groups. Those who take up arms against the State are not exempt from the obligation to respect human rights, and it is even more cruel and contradictory when such groups, with idealogical pretensions to a better State and society, take lives, impinge on human

liberty, engage in terror and intimidate populations by means of torture, enforced disappearances and kidnapping, and destruction of a people's economic infrastructure or cultural heritage, or when the political right to elect or to be elected is impaired by violent means, and when religious beliefs, cults and practices are impinged on by criminal acts.

166. The Special Rapporteur's study of reports filed with the Centre for Human Rights and of those he has received directly leads to the conclusion that groups spreading terror and groups of drug traffickers and mercenaries acting alone, at the behest of third parties or in association with terrorist groups, represent a form of violence which has undergone an alarming increase in recent years. Colombia, Peru, the Philippines and Sri Lanka are the countries most generally mentioned with reference to activities by such groups that adversely affect the enjoyment of human rights. Countries such as Afghanistan, Bolivia, the Islamic Republic of Iran, Pakistan, Panama, Turkey and the United States of America have also been affected by the activities of drug traffickers and the adverse consequences for human rights of acts of terror by armed groups that may be spreading terror are to be seen in Chile, France, Italy, Lebanon, Mozambique, South Africa, Spain, the USSR, the United Kingdom of Great Britain and Northern Ireland and Yugoslavia. That is, the adverse effect on the enjoyment of human rights and fundamental freedoms of the activities of armed groups that employ terrorist practices and of drug traffickers and mercenaries is evident not just in one region or in a particular country, but everywhere, affecting humanity as a whole.

IX. RECOMMENDATIONS

167. The following recommendations are based on information received and the analysis and conclusions put forward by the Special Rapporteur in chapter VIII.

168. Given the demonstrable effectiveness of negotiated political solutions to conflicts which strengthen the principles of sovereignty and self-determination, the Special Rapporteur recommends the reiteration of the positions taken by the United Nations against mercenary activities.

169. By eliminating points of violent confrontation, political solutions also cancel the involvement of any mercenary groups involved. In fact, however, there will tend to be a continuing supply of mercenaries willing to involve themselves in conflicts, so it would be advisable to formulate specific provisions and agreements so that, at the level of international law and national legislation, preventive measures can be adopted alongside measures severely punishing mercenary activities, whether direct, indirect or ancillary.

170. The Special Rapporteur again recommends United Nations organs to suggest to Member States that they include in their domestic legislation provisions defining the recruitment of mercenaries as an offence, categorize as aggravating factors the training of mercenaries within their territory and the involvement of mercenaries in concurrent acts, such as trafficking in arms, drugs and currency, and enter into extradition agreements for when their nationals are sought by a victim State on the basis of their proven involvement in mercenary acts against the self-determination of its people, its sovereignty or the constitutional stability of its Government.

171. On the basis of the many resolutions adopted by the General Assembly in its endeavour to condemn, combat and eradicate mercenary activities, it would be advisable to update the criterion applied, so as to include within the concept of mercenary activity not only those who engage directly in such activity but also those who sponsor it through the recruitment, financing, training or use of mercenaries. The Special Rapporteur recommends that it should apply to anyone, whether an individual or a body corporate, and that indirect intervention, covert operations and assistance to a party in conflict against the authority of the legitimate and constitutional government should be condemned.

172. Given the favourable changes and progressive normalization leading towards complete peace in Angola, the Special Rapporteur recommends wholehearted support for the Peace Accords and political democratization of the country while continuing to condemn all the factors which earlier promoted armed conflict, including foreign intervention and the presence of mercenaries. The right of the Angolan people to the full enjoyment of their sovereignty, self-determination, democracy and development should be upheld.

173. The Special Rapporteur recommends monitoring the progress of the continuing armed conflict in Mozambique and supporting the negotiations between the Government of Mozambique and RENAMO so that real cease-fire and peace agreements can be reached. This recommendation must take into account the fact that Mozambique has been and still is one of the countries most seriously affected by the active presence of mercenaries.

174. Considering how events are developing in Liberia and how they might have affected neighbouring countries such as Guinea, and the political upheaval in Zaire which has led to large-scale and brutal repression, and the fact that in each case there have been reports of an active mercenary presence, the Special Rapporteur recommends keeping a watchful eye on changing political events in those countries and stepping up moves to offer effective safeguards of sovereignty, self-determination and democracy while guarding against any attempt to use mercenaries to affect the rights of the peoples involved.

175. Various sources have drawn attention to the repeated intervention by South African civilian officials and the military in criminal acts in violation of the sovereignty and self-determination of the peoples of southern Africa, including the black population of South Africa. This is basically in line with the policy of apartheid. These acts have resulted in repeated condemnation and sanctions by the United Nations. Accordingly, and even though the policy of apartheid is being repealed and dismantled by the Government of President De Klerk, it is recommended that the Government of South Africa be approached and its attention be drawn to the appropriateness of conducting exhaustive inquiries into the criminal acts perpetrated within and outside South Africa in connection with the maintenance of the apartheid regime and the violation of the sovereignty and self-determination of other peoples. Particular emphasis should be placed on the need to investigate and punish by law the bands of mercenaries and paramilitary personnel that have participated in proven criminal acts, and a call should be made for an end to political and police protection for mercenaries on South African territory.

176. Taking into account the policy of dismantling apartheid being implemented by President De Klerk, as evidenced by the legal measures recently taken to repeal the legal bases of the regime and the movement towards democratization and political pluralism in South Africa, it is recommended that encouragement be given to that process within a context of broad support for the right of the South African people as a whole to freedom and to legal, political, social and economic equality without any discrimination whatsoever. At the same time it is suggested that emphasis be placed on the risks and dangers of the current process being reversed as long as racist organizations are permitted to be established and to carry out activities, which have included the formation of paramilitary groups and the contracting of known mercenaries. Accordingly, measures taken at the international level against apartheid should be maintained until the current process of democratization and détente is fully consolidated and the apartheid regime is completely dismantled and a genuinely democratic system is established.

177. Since the peace process initiated by the Esquipulas II agreement on "Procedures for the establishment of a firm and lasting peace in Central America" has developed favourably in Central America, it is recommended that the process be firmly supported until the final goal of ending the remaining conflicts in the region - as in El Salvador and Guatemala - is attained. At the same time all measures relating to friendship, cooperation, integration and development of the Central American region as a whole should be supported and promoted.

178. In connection with the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, it is recommended that all United Nations Member States be urged to consider ratifying or acceding thereto. The minimum number of 22 States parties required for the Convention to enter into force and become effective is still far from being attained. The Convention is an essential instrument for ensuring the security of peoples and their freedom from mercenary activities which threaten their sovereignty and right to self-determination.

179. With regard to resolution 1991/29 of the Commission on Human Rights, which calls for studies and findings on the consequences on the enjoyment of human rights of the activities of armed groups that spread terror and of drug traffickers, the Special Rapporteur has concluded, following an analysis of the issue and a review of a number of reports, that there are, indeed, groups that have been identified with illegal and illegitimate practices, including the use of terror to intimidate individuals and populations, causing grave harm to human rights and fundamental freedoms. In this connection the Special Rapporteur recommends that the relevant organs of the United Nations continue to consider the issue as a matter of high priority and to intensify their consideration until finding the most appropriate legal framework and punitive measures to be applied under international and domestic legislation against groups that spread terror among populations.

180. The Special Rapporteur also recommends that consideration be given to the desirability of assigning the Centre for Human Rights to organize working meetings where the philosophical, political, legal and practical aspects of

this subject can be discussed. He likewise recommends that consideration be given to reminding Member States and intergovernmental and non-governmental organizations that respect for human rights is a universal principle, which does not admit of any exceptions, the defence of which is a primary obligation of States. Equally, organizations in society at large must contribute to the full exercise of human rights by promoting collective awareness, with the vigorous rejection of policies of violence, these being the primary cause of disregard for human rights in the name of policies which proclaim an alternative and better form of justice.